

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawai'i**

April 22, 2022

**Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i**

REGARDING: Request for Administrative Fines and Other Penalties Against Mr. Todd Dunphy, Agent for Tropical Exotics III LLP and Tropical Exotics IV LLP for Conservation District Enforcement Case OA 22-22 Regarding the Alleged Unauthorized Grading and Construction of Shoreline Erosion Control Devices Located Makai of 59-181 E Ke Nui Rd., Tax Map Key: (1) 5-9-002:035, and Makai of 59-181 F Ke Nui Rd., Tax Map Key: (1) 5-9-002:036

The Board may go into Executive Session pursuant to Section 92-5(a)(4), Hawai'i Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

AGAINST: Tropical Exotics III LLP and Tropical Exotics IV LLP (Mr. Todd D. Dunphy, Agent)
Mr. Todd D Dunphy "Individually"

LOCATION: Makai of 59-181 E Ke Nui Rd.; and Makai of 59-181 F Ke Nui Rd., Pūpūkea-Paumalū Beach Lots, Ko'olauloa, O'ahu, Tax Map Keys: (1) 5-9-002:035 and (1) 5-9-002:036 (Dunphy parcels)

LANDOWNER: State of Hawai'i

SUBZONE: Resource in the State Land Use Conservation District

SUMMARY

This report will show that:

On January 24, 2022, a site inspection by the Office of Conservation and Coastal Lands (OCCL) revealed significant amounts of debris in the shoreline fronting the subject parcel, including broken sandbags, rocks, concrete rubble, and support beams from a failed

erosion control structure. OCCL records show that the debris dates from at least 2014, and that the property owners had been given authorization to push sand provided that the debris be removed first;

On February 23, 2022, Mr. Dunphy began placing sandbags on State-owned lands fronting his property without permit or authorization; and

Between April 8 and April 11, 2022, Mr. Dunphy brought an excavator onto State-owned lands and pushed sand to create a large berm fronting his two properties and three neighboring properties (Tax Map Key parcels (1) 5-9-002:045, 037, and 034), burying the debris from 2014 and the new unauthorized structures that he had placed on the beach. This was done without permit or authorization. Mr. Dunphy has also admitted publicly that he is willing to accept any and all penalties levied against him for his alleged unauthorized activities

DESCRIPTION OF AREA

The subject area is located on the north shore of O'ahu makai of the noted Pūpūkea-Paumalū Beach lots on a shoreline that is experiencing coastal erosion and is predicted to be affected by sea level rise (**Exhibit 1**). Each parcel (035 & 036) is a residential lot with a single-family residence. The beach area noted as TMK: (1) 5-9-001:038 fronting parcels 35 & 36, that had been set aside to the City and County of Honolulu Department of Park and Recreation as the Pūpūkea to Paumalū (Sunset) Beach Park, under Governor's Executive Order (EO) #2598, appears to have eroded (**Exhibit 2**).

Most lands in Hawai'i that are seaward of the shoreline are located in the Resource Subzone of the State Land Use Conservation District and are owned by the State. The most recent delineated shoreline for parcel 035 was certified on October 3, 2018 and the certified shoreline map indicates that the "Shoreline follows along Top Bank on April 8, 2017 before filling." The most recent delineated shoreline for parcel 036 was certified on May 18, 2009 and the certified shoreline followed along the debris line as located on January 12, 2009 (**Exhibit 3**).

The beach in the Pūpūkea to Paumalū area is composed of carbonate coarse sand with occasional outcrops of limestone that are intermittently buried or exposed by the shifting sand. The underlying sediments, being largely composed of coarse-grained sand, suggests deposition by waves (as opposed to wind), and thus the dune upon which the subject lot sits could be considered a high wave berm. These types of dunes are active components of the beach systems and are highly vulnerable to episodic erosion events, such as those that occur within the subject area on a seasonal basis.

Long-term shoreline change rates in the vicinity of the subject property have trended towards chronic erosion (approximately -0.5 ± 0.7 feet per year – **Exhibit 4**). In addition to the long-term erosional trends are large seasonal fluctuations in beach width and shoreline position generated by sediment exchange among the eastern and western segments of the sediment cell due to the seasonal variability in wave and wind patterns. The beaches of O'ahu's north shore are some of the state's most valued natural resources as well as an attraction that brings residents and visitors to the north shore to support

community economic activities key for the north shore. The Paumalū to Pūpūkea stretch of beach, in particular, is one of the more famous beaches in the area and is heavily utilized by the public, both residents and visitors alike, at all times of the year. Many of the shorefront homes in the area, such as the subject parcels, are built on the frontal sand dune and thus vulnerable to the effects of both chronic and seasonal coastal erosion.

BACKGROUND

The subject parcels have a history of being impacted by chronic and seasonal coastal erosion. Mr. Dunphy has repeatedly attempted to mitigate the seasonal erosion affecting this stretch of the shoreline without proper authorization.

The Dunphy parcels have been the subject of four (4) previous enforcement actions (ENF: OA 05-35, OA 15-22, OA 22-6, & OA 22-7) by the Office of Conservation and Coastal Lands (OCCL) for unauthorized land uses in the Conservation District consisting of the installation of unauthorized erosion control materials.

- ENF: OA 05-35 (2004), the Board deferred action as Mr. Dunphy stated that a friend of his constructed the shoreline structure without his knowledge and he removed it but left sandbags. **OCCL's follow up found that the structure and sandbags had been removed.**
- ENF: OA 15-22 (2015), Mr. Dunphy placed sandbags in the shoreline area fronting his parcels. Mr. Dunphy appeared to have removed the unauthorized sandbags to resolve the matter. See pages 38 to 39 in **Exhibit 5**.
- ENF: OA 22-6 and 22-7 (2022), Mr. Dunphy was issued a CRVS Notice for a roped off area and stairs on the beach. The matter was resolved by Mr. Dunphy removing the rope fence and stairs.

In addition, Mr. Dunphy has participated or initiated sand pushes with his neighbors to help manage the erosion. While these were reviewed and authorized by the Department, none of these efforts complied with the emergency authorization given. **Exhibit 5** contains photographic documentation from December 2013 to April 2022 of the shoreline area makai of Mr. Dunphy's properties including some of these sand pushing efforts. A Right of Entry was obtained from the City's Parks and Recreation Department to conduct the work (see page 96 in **Exhibit 6**). In reviewing this case, Mr. Dunphy has initiated emails and correspondence with staff regarding these matters. A summary of Mr. Dunphy and his neighbors sand pushing efforts are summarized below.

Sand Pushing

January 2014: Emergency authorization was given for sand pushing fronting eight (8) properties, including the subject parcels. The authorization noted that sand should be used primarily from the nearby stream mouth, and that any sand scraping of the beach front should be minimized. The contractor did not use sand from the stream mouth as advised, and all the sand was taken from the beach. Sandbags, rocks, concrete

rubble, and support beams from a failed structure were not removed prior to the sand pushing but were buried under the new berm in front of the subject parcels. See pages 31 to 35 and pages 56 to 68 in ***Exhibit 5***.

March 2015: Emergency authorization was given for sand pushing fronting six (6) properties, including the subject parcels. Four (4) other properties were excluded from the authorization due to either existing revetments or because of active land use violations.

March 2018: Emergency authorization was given for sand pushing fronting six (6) properties, including the subject parcels. A follow up site inspection by OCCL revealed that the pushing was not in compliance with what had been agreed upon; the slope was raised over one (1) foot above the previous beach face; and the sand was scraped one (1) foot below.

February 2021: Emergency authorization was given for sand pushing fronting the subject parcels. This effort was initiated by Mr. Dunphy. A follow up site inspection by OCCL revealed that the amount of sand pushed far exceeded what was authorized. When OCCL consulted with the School of Ocean and Earth Science and Technology Sea Grant Extension Agents they expressed concern that the amount and steepness of sand pushed could accelerate erosion fronting the neighboring properties.

UNAUTHORIZED LAND USE IN THE CONSERVATION DISTRICT

On January 17, 2022, the OCCL conducted a site to the area. A series of seasonally large winter swells from a westerly direction appeared to have accelerated erosion along this stretch of the Paumalū shoreline affecting several shoreline properties, including the subject parcels. The combination of high waves, high tides, and accelerated erosion exposed unauthorized erosion control materials in front of the subject parcels that appeared to have been buried by previous sand pushing efforts. See pages 56 to 58 in ***Exhibit 5***.

Soon after, OCCL began receiving complaints and reports of alleged unauthorized work along this stretch of Paumalū and began conducting visits to the area to document conditions and alleged unauthorized activities. Site Visits or responses to complaints of alleged unauthorized work were conducted on January 18, 2022, January 24, 2022, January 27, 2022, and January 31, 2022. See pages 59 to 68 in ***Exhibit 5***.

On at least one of these site visits, Mr. Dunphy approached staff regarding a proposed sand push. Based on the lack of sand and dry beach, staff informed him that there did not appear to be enough sand or a safe way to perform a sand push. Additionally, it was brought to Mr. Dunphy's attention that there appeared to be unauthorized erosion control materials, debris, and encroachments fronting his properties that were causing a nuisance and needed to be resolved and/or removed. Staff stated that if Mr. Dunphy had a proposal, it should be submitted in writing.

On February 1, 2022, Mr. Dunphy sent a series of emails and attachments to staff. The first email contained the subject "Emergency sand push" and stated: *My house is built with little white one that's hanging I have two houses there that are both ones 3ft undermined and the other house it's 4 feet from my front XXX-XXX-XXXX is my phone number.* Attached to the emails were photos of the erosion scarp fronting the subject parcels, Correspondence OA 21-83 (see Sand Pushing February 2021 above), and a City and County of Honolulu Department of Parks and Recreation Right-of-Entry Permit for the February 2021 sand push. See **Exhibit 6**.

On February 4, 2022, OCCL issued Tropical Exotics III & IV LLP c/o Mr. Dunphy a letter regarding potential unauthorized land uses within the Conservation District (ref COR: OA 22-121). It served as an official correspondence to Mr. Dunphy that OCCL had observed alleged unauthorized erosion control materials and debris in the shoreline area fronting the subject parcels. The letter notified the homeowners that: *The DLNR has numerous concerns about these materials and work being done. Shoreline structures can create downstream impacts that negatively impact your neighbors' properties and the health of the beach. Improperly installed structures create debris that pollutes the ocean.* Mr. Dunphy was given thirty (30) days to respond with a written statement regarding the alleged unauthorized activities and how he intended to correct the situation. Staff notes that no written response was received from Mr. Dunphy, but staff did continue to engage with Mr. Dunphy by email to encourage him to submit a proposal for how he intended to correct the situation. See **Exhibit 7**.

On February 16, 2022, OCCL received a photo showing that Mr. Dunphy had installed a tarp or erosion control blanket over the erosion scarp fronting at least one of the subject parcels. See page 69 in **Exhibit 5**.

On February 23, 2022, OCCL received a photo appearing to show Mr. Dunphy and his agents installing sandbags fronting the subject parcels. See page 70 in **Exhibit 5**.

On February 28, 2022, Mr. Dunphy confronted the Chair of the Board of Land and Natural Resources (BLNR) while she was inspecting the scene where a house collapsed onto the beach approximately two (2) properties west of the subject parcels and demanded authorization for coastal erosion protections. Staff notes that no written response or proposal had or have been submitted to OCCL or the Department by Mr. Dunphy.

On April 7, 2022, OCCL received multiple anonymous tips that Mr. Dunphy was preparing to install sandbags in the shoreline area fronting the subject parcels and to bring in an excavator over the weekend. Staff were provided photos of men digging a trench and installing sandbags within the shoreline fronting the subject parcels. OCCL alerted the Division of Conservation and Resource Enforcement (DOCARE) to be on alert. Individuals who contacted OCCL with this information were advised to call either the DOCARE Hotline or the Honolulu Police Department (HPD) if they observed machinery within the shoreline over the weekend. See pages 72 to 73 in **Exhibit 5**.

On April 8, 2022, to April 10, 2022, anonymous sources/individuals sent OCCL videos and photos of an excavator on the beach working during the night and in the early morning pushing sand to bury the sandbags and to grade and mine sand to construct a steep sand embankment fronting the subject parcels and adjacent properties. The work appears to

have occurred from Friday night and continued through the late hours of Sunday evening. See pages 74 to 77 in **Exhibit 5**.

On April 11, 2022, OCCL received an email and phone call that an excavator was on the beach and that work had started at approximately 6 am. OCCL staff and a DOCARE officer conducted a site visit and observed the excavator on the beach moving sand to construct a large, steep sand berm fronting the subject parcels and adjacent properties. See pages 78 to 88 in **Exhibit 5**.

On April 12, 2022, Hawai'i News Now reported: "State investigating after North Shore homeowner moves tons of sand in bid to protect property".¹ In the interview and video posted with the report, Mr. Dunphy stated, "I heard a crack the other day and I just went out (and said) I'm saving my house, I don't care, I'll take the fine, whatever." Additionally, it appears that Mr. Dunphy brought the excavator back onto the beach after it appeared he and his agent were removing it per DLNR staffs' request. See **Exhibit 8**.

On April 14, 2022, as part of the State's investigation, DLNR notified the State Department of Health, the Honolulu Police Department, the Honolulu Department of Parks and Recreation, the Honolulu Department of Planning and Permitting, and the U.S. Army Corps of Engineers of potential violations within their respective jurisdictions. [Correspondence attached; not indexed]

CONSERVATION DISTRICT RULES AND STATUTES

Land uses in the Conservation District are regulated under the Hawai'i Revised Statutes (HRS) Chapter 183C, and the Hawai'i Administrative Rules (HAR), Chapter 13-5. HAR Chapter 13-5 identifies land uses that may be applied for within the Conservation District, and the statute provides for penalties, collection of administrative costs, and damages for uses of Conservation District land that are not allowed or for which no permit has been obtained.

HAR § 13-5-6(d) provides that "no land use(s) shall be conducted in the conservation district unless a permit or approval is first obtained from the department or board."

HAR § 13-5-2, defines "land use" as follows:

- (1) the placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs;
- (2) the grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;
- (3) the subdivision of land; or

¹ The video of the Hawai'i News Now interview with Mr. D Dunphy can be viewed at <https://www.Hawai'inewsnow.com/2022/04/12/state-investigating-after-north-shore-homeowner-moves-tons-sand-protect-his-property/>

- (4) the construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

“Grading” is defined as the excavation of earth material, fill, or combination thereof. HAR § 13-5-2.

One of the allowed uses is for shoreline erosion control. HAR § 13-5-22 P-15(D-1) allows for a:

Seawall, revetment, groin, or other coastal erosion control structure or device, including sand placement, to control erosion of land or inland area by coastal waters, provided that the applicant shows that (1) the applicant would be deprived of all reasonable use of the land or building without the permit; (2) the use would not adversely affect beach processes or lateral public access along the shoreline, without adequately compensating the State for its loss; or (3) public facilities (e.g., public roads) critical to public health, safety, and welfare would be severely damaged or destroyed without a shoreline erosion control structure, and there are no reasonable alternatives (e.g., relocation). Requires a shoreline certification.

HRS, §183C-7 (Penalty for violation) provides, in part, as follows:

- (a) The department shall prescribe administrative procedures as it deems necessary for the enforcement of this chapter.
- (b) Any person violating this chapter or any rule adopted in accordance with this chapter shall be fined not more than \$15,000 per violation in addition to administrative costs, costs associated with land or habitat restoration, and damages to public land or natural resources, or any combination thereof. After written or verbal notification from the department, willful violation of this chapter or any rule adopted in accordance with this chapter may incur an additional fine of up to \$15,000 per day per violation for each day in which the violation persists.

The board may set, charge, and collect the fine based on the value of the natural resource that is damaged, the market value of the natural resource damaged, and any other factor it deems appropriate, such as the loss of the natural resource to its natural habitat and environment and the cost of restoration or replacement. The remedies provided for in this subsection are cumulative and in addition to any other remedies allowed by law.

Pursuant to HAR, §13-5-6 Penalty, any person, firm, government agency, or corporation violating any of the provisions of chapter 13-5, or permits issued pursuant thereto, shall be punished as provided in chapter 183C, HRS.

Chapter 205A-2 regarding Coastal Zone Management provides the following as State policy: (B) Prohibit construction of private shoreline hardening structures, including seawalls and revetments, at sites having sand beaches and at sites where shoreline hardening structures interfere with existing recreational and waterline activities.

ENCROACHMENT UPON STATE LAND

HRS, §171-6 (12) states the Board may “[b]ring such actions as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall:

- (A) Be fined not more than \$1,000 a day for the first offense;
- (B) Be fined not less than \$1,000 nor more than \$4,000 per day upon the second offense and thereafter;
- (C) If required by the board, restore the land to its original condition if altered and assume the costs thereof;
- (D) Assume such costs as may result from adverse effects from such restoration; and
- (E) Be liable for administrative costs incurred by the department and for payment of damages...”

HRS, §171-6 (15) further allows the Board to assess the following fines for a violation on Chapter 171 or any rule adopted thereunder:

- (15) Set, charge, and collect reasonable fines for violation of this chapter or any rule adopted thereunder. Any person engaging in any prohibited use of public lands or conducting any prohibited activity on public lands, or violating any of the other provisions of this chapter or any rule adopted thereunder, for which violation a penalty is not otherwise provided, shall be:
 - (A) Fined no more than \$5,000 per violation for a first violation or a violation beyond five years of the last violation; provided that, after written or verbal notification from the department, an additional \$1,000 per day per violation may be assessed for each day in which the violation persists;
 - (B) Fined no more than \$10,000 per violation for a second violation within five years of the last violation; provided that, after written or verbal notification from the department, an additional \$2,000 per day per violation may be assessed for each day in which the violation persists;
 - (C) Fined no more than \$20,000 per violation for a third or subsequent violation within five years of the last violation; provided that, after written or verbal notification from the department, an additional \$4,000 per day per violation may be assessed for each day in which the violation persists; and
 - (D) Liable for administrative costs and expenses incurred by the department and for payment for damages, including but not limited to natural resource damages.

In addition to the fines, administrative costs, and damages provided for hereinabove, for damage to or theft of natural resources, the board may also set, charge, and collect a fine that, in its discretion, is appropriate considering the value of the natural resource that is damaged or the subject of the theft. In arriving at an appropriate fine, the board may consider the market value of the natural resource damaged or taken and any other factor it deems appropriate, such as the loss of the natural resource to its natural habitat and environment and the cost of restoration or replacement. The remedies provided for in this paragraph are cumulative and in addition to any other remedies allowed by law.

No person shall be sanctioned pursuant to this section for the exercise of native Hawaiian gathering rights and traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawai'i state constitution;

DISCUSSION

The beaches of Hawai'i are held in trust by the State for the benefit of present and future generations. The State must be consulted, and a land disposition obtained, when individuals seek to temporarily use beach areas for construction purposes. There should be consequences when an individual unilaterally and willfully acts in such a way that endangers a public trust resource.

Coastal erosion occurs as a result of the following phenomena:

- (1) Seasonal changes in waves and currents that moves sand alongshore or across the shore, adjusting the beach profile;
- (2) Long-term (chronic) deficiencies in natural sand supply and/or fluctuations in meteorological or oceanographic processes such as storms and seas level rise; and
- (3) Human impacts to sand availability through sand impoundment and supply disruption from development and coastal engineering.

During the last several years, beach erosion in this area appears to have intensified significantly. While such erosion could be attributed to decadal scale fluctuations in beach morphology (normal accretion and erosion cycles), it is more likely that the erosion has become chronic and permanent and as a result of acceleration in sea level rise this century. Thermal expansion of the oceans and melting glaciers and ice fields is causing sea level rise resulting in the landward migration of the active beach. Over the past century, local tide gauges have measured approximately 0.5 ft of rise in sea levels among the islands such that it should be no surprise that resulting impacts are occurring.

The Department has taken a number of measures throughout the past two decades to address the progressively damaging chronic and seasonal erosion concerns in the greater Paumālū to Pūpūkea (Sunset) Beach area. The Department has worked with the Honolulu Department of Parks and Recreation to develop and authorize City-led sand pushing operations to mitigate seasonal erosion at Sunset Beach Park as well as many

of the City and County of Honolulu beach rights-of-way along the north shore. The Department has also conditionally approved preventative berm maintenance projects (sand pushing) upon request with private landowners that meet relevant criteria which provide added protection (an “erodible buffer”) while conserving the natural characteristics of the public beach environment.

Prior to 2020 the Department has provided temporary emergency authorizations for geotextile cloth erosion control measures, commonly known as sandbag “burrito” revetments, fronting several homes in the subject area. The Department authorized these erosion measures as **temporary** solutions so that long-term options could be developed by subject landowners. Requests such as those above have become commonplace to the extent that multiple sand pushing projects are now completed annually and geotextile tarps and sandbags line several sections of the shoreline along the greater Paumalū-Pūpūkea beach stretch.² Staff admits that the situation is challenging for the homeowners, but the Department is also confronted by the lack of compliance and continued violations. The subject landowners do not seem to have used the opportunity of temporary authorizations to develop long-term options, such as moving their homes away from the shoreline.

In 2020 the Legislature passed, and on September 15, 2020, the Governor of the State of Hawai‘i signed into law, Act 16, which amended Hawai‘i Revised Statutes Chapter 205A-2 regarding Coastal Zone Management to include the following policy:

(B) Prohibit construction of private shoreline hardening structures, including seawalls and revetments, at sites having sand beaches and at sites where shoreline hardening structures interfere with existing recreational and waterline activities.

As such, the Department has notified landowners that they can expect far more stringent conditions on work in the shoreline than what has been required in the past.

The administrative rules recognize that the allowance of shoreline erosion control measures for private applicants is a balance between the applicant’s reasonable use of private property, the effect on beach processes or lateral public access, and protection of the public trust beach and shoreline access. HAR § 13-5-22 P-15(D-1).

The OCCL has been significantly challenged by the events on the north shore over the past several years. The office has been trying to balance the security of the homeowners with protection of the sand beach. Without intervention by this office with a combination of authorizing sand pushing/shaping and soft erosion control measures, many homes would have already been harmed. Yet, many homeowners have installed, and continue to install, erosion protection systems on public beach land in the Conservation District

² The OCCL notes that while these measures are currently mildly effective at protecting beachfront development, it is understood that sea level rise will render these temporary measures increasingly ineffective. For this reason, the OCCL encourages beachfront homeowners living on chronically eroding shorelines to take proactive measures, such as decreasing their building footprint and relocating structures to the extreme landward extent of their property boundaries.

without Department consent or authorization. The reality of the situation is the north shore surf is an unpredictable massive force that may not be able to be managed.

Based on the presented evidence, it is clear that Mr. Dunphy did not obtain authorization to grade the public beach fronting his parcels when he constructed erosion control structures on public trust lands or when performing a sand push, nor did he obtain a land disposition or permission from the Board to allow machinery on the beach and to utilize and occupy State lands.³ Based on previous correspondence, authorizations, and violations, Mr. Dunphy has a history of past permits and authorizations and is fully aware of the need to consult with the Department prior to conducting work in the shoreline area. Mr. Dunphy has admitted to Department staff and the general public that he is responsible for the alleged unauthorized land use and activities in the shoreline area fronting the subject parcels. He has also stated that he is willing to accept any and all penalties levied against him for his alleged unauthorized activities (see April 12, Hawai'i News Now Story).

Staff is recommending that the Board issue the following fines and penalties allowed under its authority.

FINDINGS AND CONCLUSIONS

Based on the above-summarized information, OCCL Staff has reached the following findings and/or conclusions regarding the alleged violation:

1. That Mr. Dunphy did in fact, authorize and cause:
 - The grading and disturbance of sand upon public land within the State Land Use Conservation District, Resource Subzone;
 - The occupation of public land by the erosion control measure is without a land disposition
2. That Mr. Dunphy has failed to remove debris from past erosion control structures fronting his properties despite receiving notices from the Department;
3. That Mr. Dunphy continued to install new erosion control structures on public land after a verbal notification, written correspondence, and prior knowledge that the work would require authorization from the Department;
4. That Mr. Dunphy has had previous violations within a five-year period; and
5. That the unauthorized occupation of public land occurred upon submerged public land that lies within the State Land Use Conservation District, Resource Subzone.

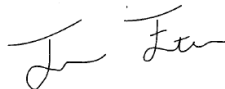
³ Because the emergency erosion control structure is installed in front of the portion of the property that is eroding, it is considered to be on the state submerged land. The Department requires an applicant for an emergency erosion control permit (such as to place sandbags on the beach) to apply for a Right of Entry or a Revocable Permit from the Board under HRS 171-55.

STAFF RECOMMENDS

That the Board of Land and Natural Resources adopt staff's findings and conclusions and issue the following administrative fines:

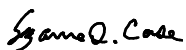
1. Pursuant to HRS §183C-7, Mr. Dunphy is fined \$15,000.00 for violating the provisions of HAR §13-5-24 by grading submerged land in the Conservation District Resource subzone without obtaining the appropriate approvals;
2. Pursuant to HRS §171-6 (12), Mr. Dunphy be fined \$1,000.00 per day for failure to remove the existing encroachments upon public lands dated from when he received notice on February 4, 2022, for a total of \$77,000.00;
3. That Mr. Dunphy shall pay all designated fines and administrative costs (\$92,000.00) within thirty (30) days from the date of the Board's action;
4. That Mr. Dunphy shall remove all unauthorized erosion control materials and encroachments within thirty (30) days from the date of the Board's action;
5. That Mr. Dunphy shall restore the shoreline area to a more natural state and the Department's satisfaction within thirty (30) days from the date of the Board's action;
6. That in the event of failure of Mr. Dunphy to comply with any order herein, Mr. Dunphy and the homeowners shall be fined an additional \$16,000.00 per day (pursuant to HRS § 171-6 (12) and HRS §183C-7) until the order is complied with;
7. That in the event of failure of the landowner to comply with any order herein, this matter shall be turned over to the Attorney General for disposition, including all administrative costs; and
8. Delegate authority to the Chairperson to effectuate the above recommendations, subject to such conditions as may be prescribed by the Chairperson to best serve the interest of the State, without further consultation with the Board, subject to review and approval by the Department of the Attorney General.

Respectfully submitted,



Trevor Fitzpatrick, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



Suzanne D. Case, Chairperson
Board of Land and Natural Resources

Exhibit List for K-1

Exhibit 1: Location & Sea Level Rise Map (Pages 14-16)

Exhibit 2: C&CH Department of Planning & Permitting Property Information for Parcels 035 & 036
(Pages 17-19)

Exhibit 3: Certified Shorelines for Parcels 035 & 036 (Pages 20-24)

Exhibit 4: UH Coastal Geology Group Erosion Rate Map (Pages 25-26)

Exhibit 5: Periodic Photo Documentation of Shoreline Area Fronting Parcels 035 & 036 from
Approximately December 2013 to April 2022 (Pages 27-91)

Exhibit 6: 2/1/2022 Todd D Dunphy Email and Attachments (Pages 92-97)

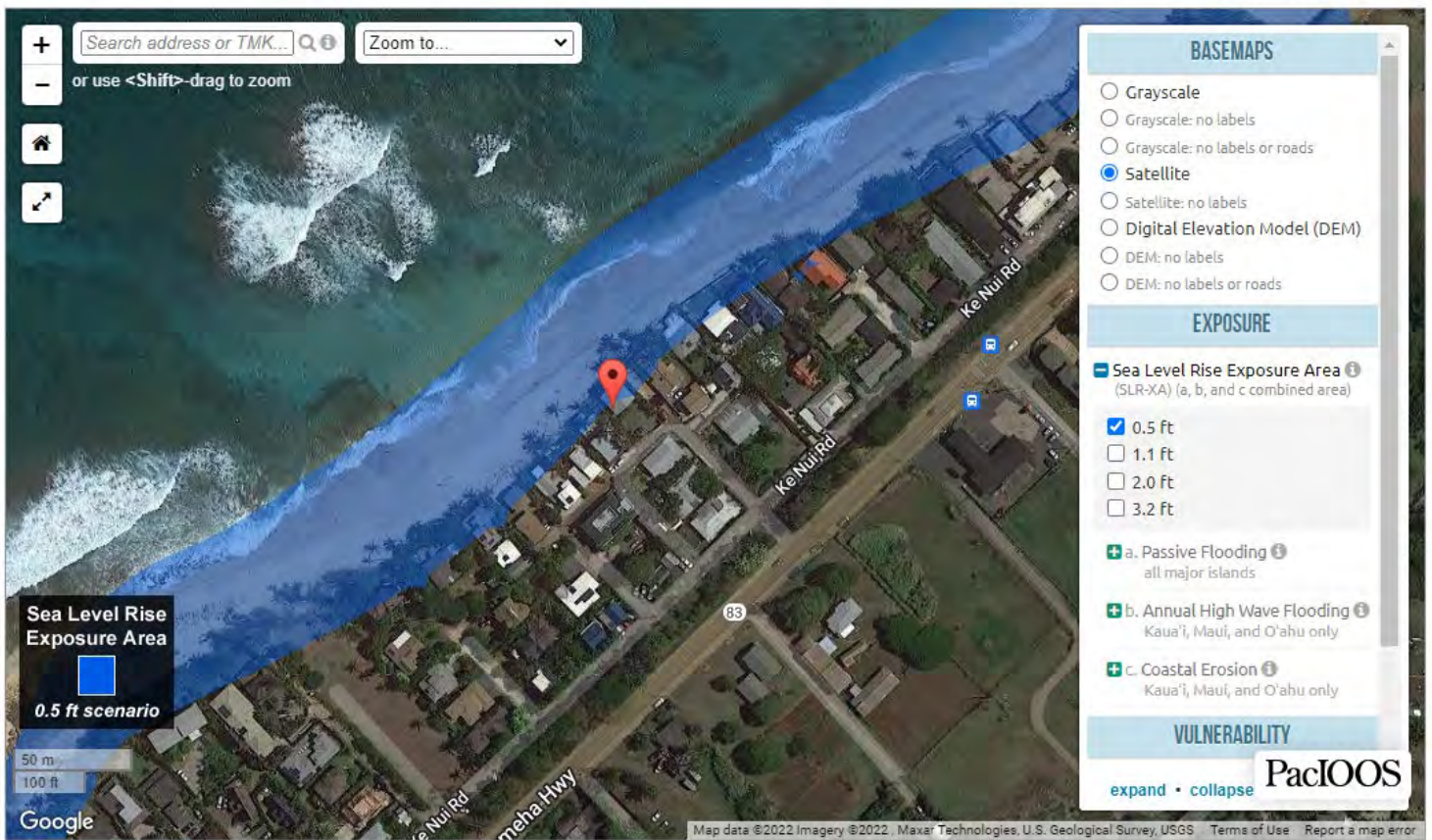
Exhibit 7: COR: OA 22-121 Potential Unauthorized Land Uses within the Conservation District seaward
of Parcels 035 & 036 (Pages 98-104)

Exhibit 8: 4/12/2022 Hawaii News Now Report (Pages 105-106)

Exhibit 9: 4/13/2022 Letter to Agency Heads (Pages 106-109)



Exhibit 1: Location Map



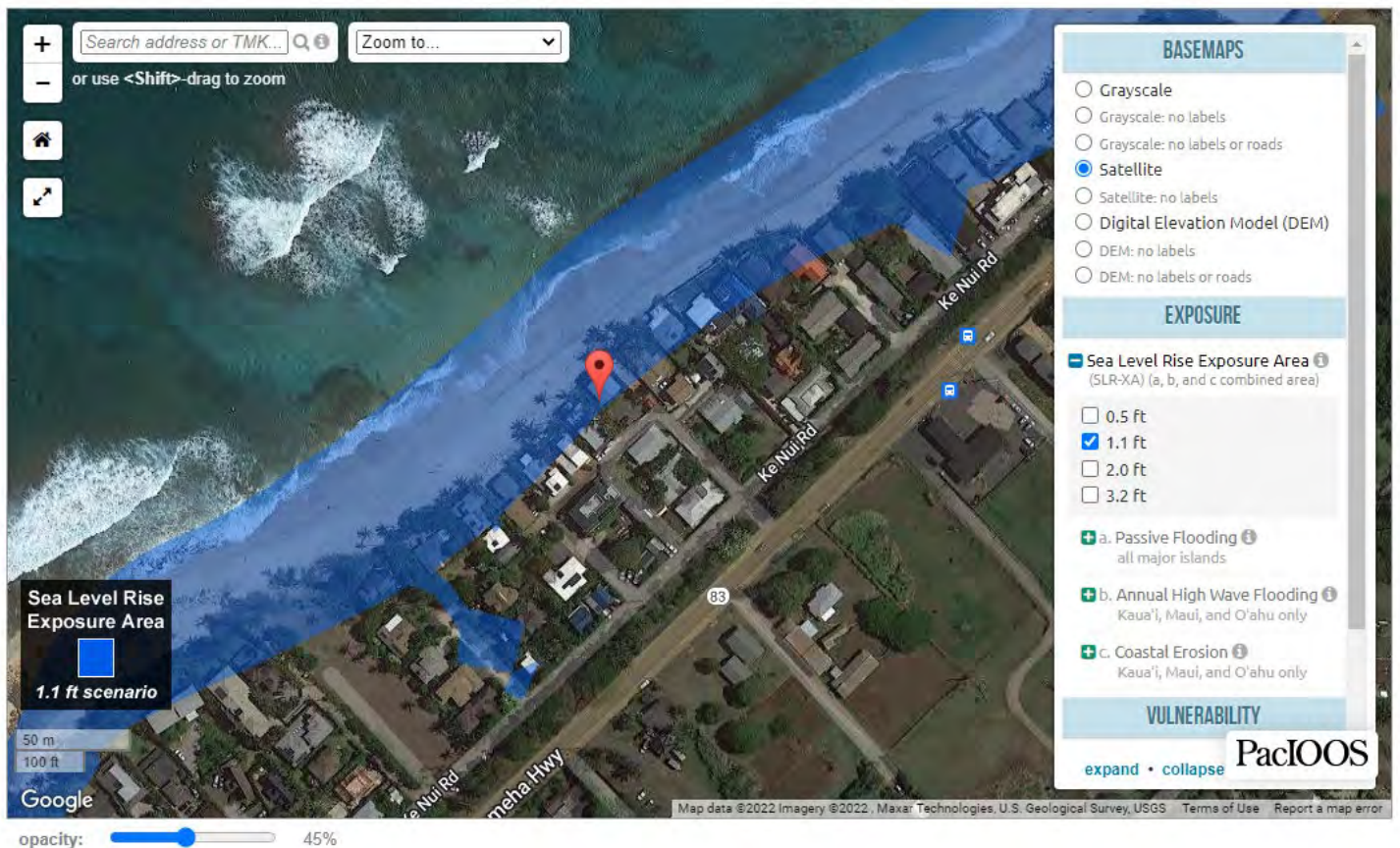
opacity: 45%

Plat Area: (1) 5-9-002

TMK: (1) 5-9-002:035 Marker

at 0.5-ft ≈ 2030 above

at 1.1-ft ≈ 2050 below



opacity: 45%

Exhibit 1: SLR-XA Map of Paumalu & Subject Parcels

Sea Level Rise Projections For Modeling

Sea level rise exposure mapping in the 2017 Hawai'i Sea Level Rise Report is based on an upper-end projection of 3.2 feet of sea level rise by 2100 in the 5th Assessment Report (AR5) of the Intergovernmental Panel on Climate Change (IPCC)

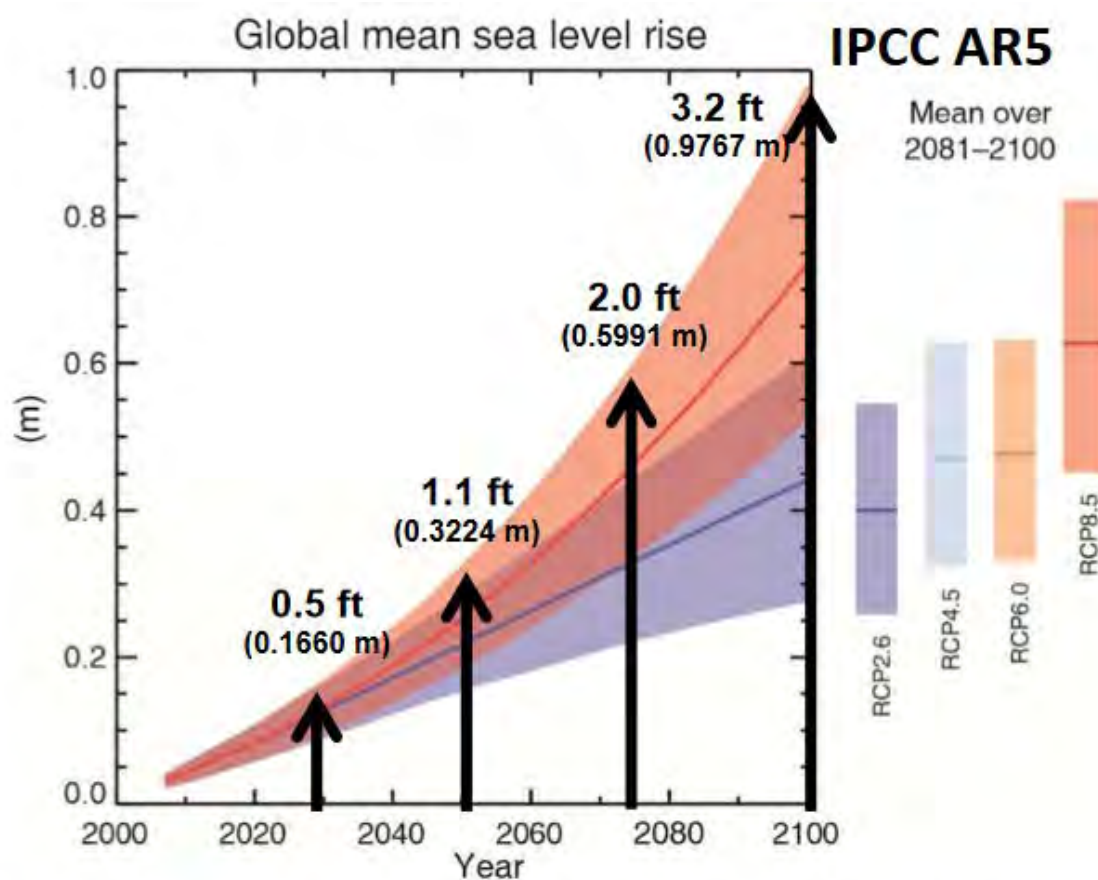


Figure 1. Projected GMSL rise under different greenhouse gas emissions scenarios from the IPCC AR5 Report.

As expected, the science on sea level rise observations and forecasts have continued to advance. Since completion of the 2017 Report, peer-reviewed scientific literature as well as government and multinational reports increasingly point to about 3 feet of sea level rise by 2100 as a mid-range, rather than high-end



59 181 E KE NUI RD

Thursday, April 14, 2022 | 9:28:51 AM

General Information

TMK:	59002035:0000
Building Value:	\$1,003,600.00
Building Exemption:	\$0.00
Land Value:	\$1,784,100.00
Land Exempt:	\$0.00
Acres:	0
Square Feet	4,910
<u>Property Tax Class:</u>	Residential
City:	Haleiwa
Zip Code:	96712
Realtor Neighborhood:	Sunset Area



Nearest Park:

Tax Bill Owner Information

Name	Type	Address	Address 2	City State Zip
TROPICAL EXOTICS III LLP	Fee Owner	C/O DUNPHY,TODD D	59-181 #F KE NUI RD	HALEIWA HI 96712

2010 Census Information

Tract Number:	010100	City Council Member:	Heidi Tsuneyoshi
Block Number:	1003	Polling Place:	Sunset Beach Elem Sch
Population (block):	5	Address:	59-360 Kamehameha Hwy
		Neighborhood Board:	North Shore

Voting Information

School and Transit Information

Elementary School:	Sunset Beach	show route
High School:	KAHUKU	show route
Near Transit Route:		Yes
Near Bus Routes:		55, 88A

Zoning and Flood Information

Zoning (<u>LUO</u>) Designation:	R-5
Ohana Zoning Designation:	Eligible
FEMA <u>Flood</u> Designation:	AE / AE / VE
Tsunami Evacuation Zone:	Yes

[more public safety info >>](#)

Page Tools: [PRINT](#) | [BOOKMARK](#) | [EMAIL](#) | [STREET/BIRD'S EYE](#)

More info: [ZONE INFO](#) | [BUILDING PERMITS](#) | [PROPERTY TAX](#)

Information shown on these maps are derived constantly undergoing change and do not represent a warranty for content or accuracy.

2010 Assessed Values as of October 1, 2009.

Permitting
Hawaii, HI 96813

Honolulu. All Rights Reserved

Exhibit 2

K-1

Page 17



59 181 F KE NUI RD

Thursday, April 14, 2022 | 9:28:56 AM

General Information

TMK:	59002036:0000
Building Value:	\$565,200.00
Building Exemption:	\$0.00
Land Value:	\$1,779,700.00
Land Exempt:	\$0.00
Acres:	0
Square Feet	4,888
<u>Property Tax Class:</u>	Residential
City:	Haleiwa
Zip Code:	96712
Realtor Neighborhood:	Sunset Area



Nearest Park:

Tax Bill Owner Information

Name	Type	Address	Address 2	City State Zip
TROPICAL EXOTICS IV LLP	Fee Owner	59-181 KE NUI RD # F		HALEIWA HI 96712

2010 Census Information

Tract Number:	010100	City Council Member:	Heidi Tsuneyoshi
Block Number:	1003	Polling Place:	Sunset Beach Elem Sch
Population (block):	5	Address:	59-360 Kamehameha Hwy
		Neighborhood Board:	North Shore

Voting Information

School and Transit Information

Elementary School:	Sunset Beach	show route	Zoning (LUO) Designation:	R-5
High School:	KAHUKU	show route	Ohana Zoning Designation:	Eligible
Near Transit Route:		Yes	FEMA Flood Designation:	AE / AE / VE
Near Bus Routes:		55, 88A	Tsunami Evacuation Zone:	Yes

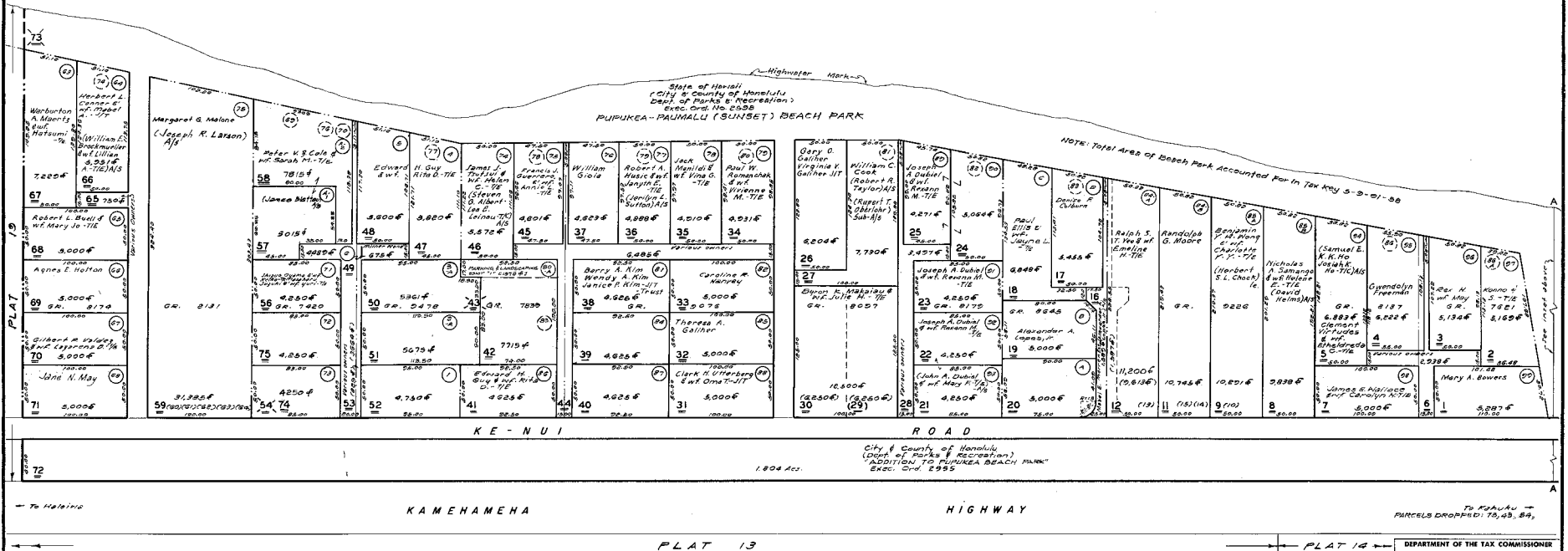
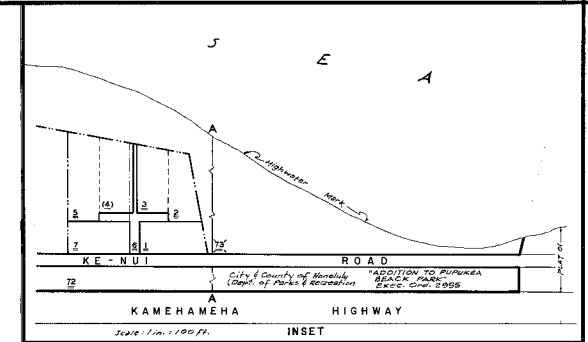
Zoning and Flood Information

[more public safety info >>](#)

Exhibit 2

FEB 10 1977
SEP 2 1977
NOV 1 1977
NOV 1 1977

DWG NO. 1770 (Revised)
SOURCE: Tax Maps Bureau
BY: L. B. February 15, 1977



Por. PUPUKA-PAUMALU BEACH LOTS, KOOLAULO, OAHU

SUBJECT TO CHANGE

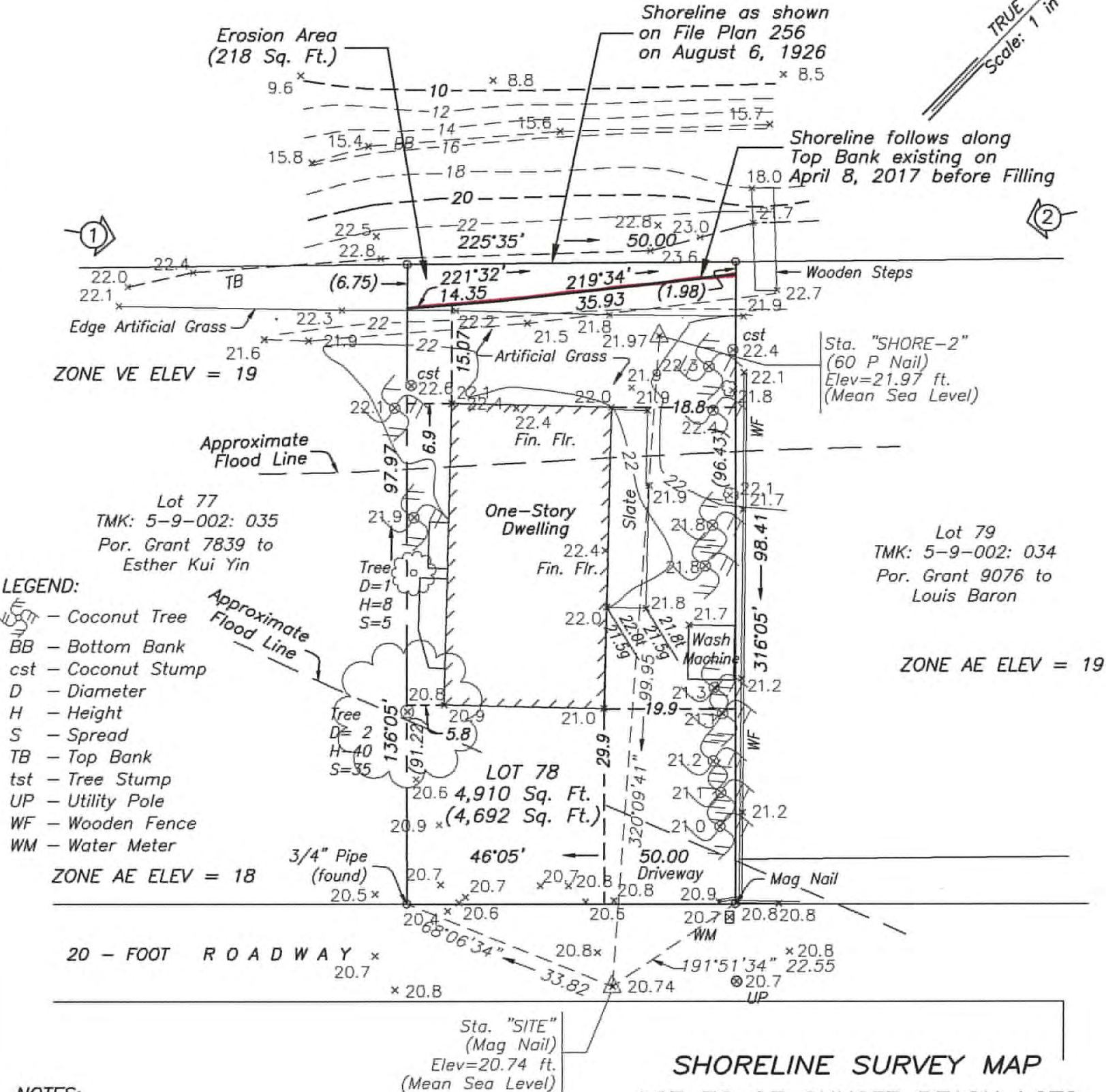
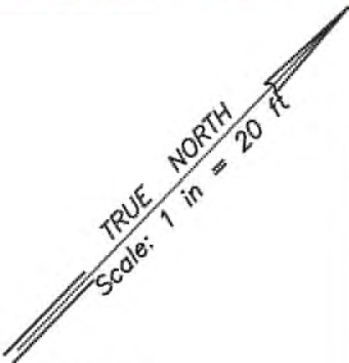
NOTE: Numbers indicated thusly (10) refer to lot numbers of Pupuka-Paumalu Beach Lots Sub. Numbers indicated thusly (10) refer to lot numbers of Sunset Beach Lots Sub.

DEPARTMENT OF THE TAX COMMISSIONER			
TAXATION MAPS BUREAU			
STATE OF HAWAII			
TAX MAP			
FIRST	SEC.	DIVISION	PLAT
5	9	02	
CONTAINING PARCELS			
SCALE: 1 IN. = 50 FT.			

Exhibit 2

K-1

State of Hawaii
(City & County of Honolulu, Dept. of Parks & Recreation)
Executive Order No. 2598
PUPUKEA - PAUMALU (SUNSET) BEACH PARK



- NOTES:
1. Direction of photographs taken on Aug. 29, 2018 at 2:00 PM
 2. Elevations were referred to bench mark, "TU0520" (RM-18) with an elevation of 27.192 Ft. (MSL).
 3. Shoreline as shown is subject to Final Certification by the Department of Land and Natural Resources as recommended by the Hawaii State Land Surveyor.
 4. FIRM No. 15003C0020 F
FIRM Index Date: November 05, 2014
Flood Zone: AE (Elev. 18/19) and VE (Elev. 19)

SHORELINE SURVEY MAP
LOT 78 OF SUNSET BEACH LOTS
AS SHOWN ON FILE PLAN MAP No. 256
(Grant 9076 to Louis Baron)
Tax Map Key: (1) 5-9-002: 035
At PUPUKEA, KOOLAULOA, OAHU, HAWAII
(Site Address: 59-181E Ke Nui Road, Haleiwa)
Owner: TROPICAL EXOTICS III LLP
Address: 21129 Foothill Boulevard
Hayward, California 94541

The shoreline as delineated in red is hereby certified as the shoreline as of

OCT 03 2018

Chairperson, Board of Land and Natural Resources



This work was prepared by me or under my supervision

GIL P. BUMANGLAG
Licensed Professional Land Surveyor
Certificate Number 8948
Exp. Date: April 30, 2020

Date: August 29, 2018

FB No. G-415: 60-78; 72
c:\shore\KENUI-181-E-SHORE-08-29-

Exhibit 3: 2018 Certified Shoreline for Parcel 035

10" x 15" = 1.04

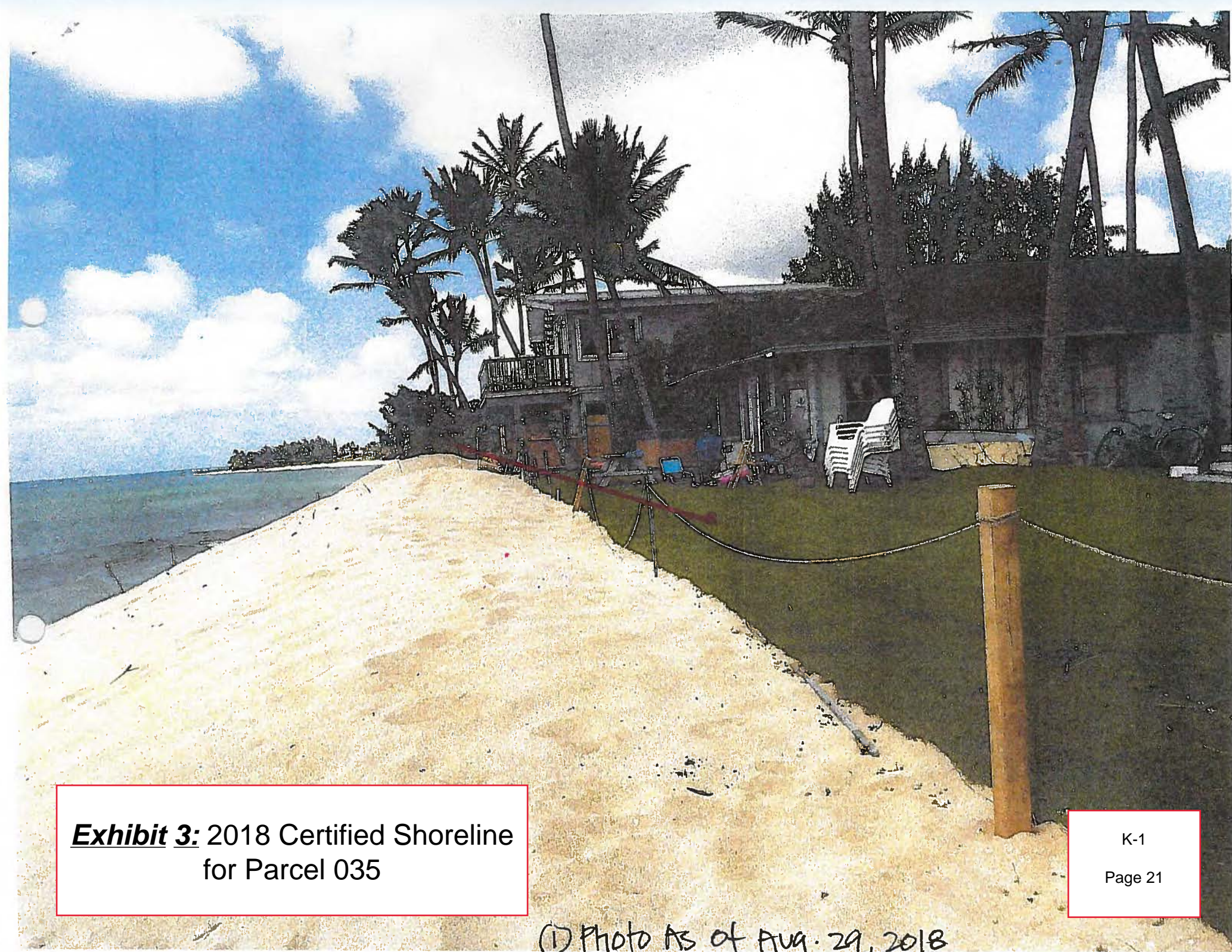


Exhibit 3: 2018 Certified Shoreline
for Parcel 035

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Page 21

(1) Photo AS of Aug. 29, 2018



Exhibit 3: 2018 Certified Shoreline
for Parcel 035

K-1

Page 22

(2) Photo As of Aug. 29, 2018

The shoreline as delineated in red is hereby certified as the shoreline as of

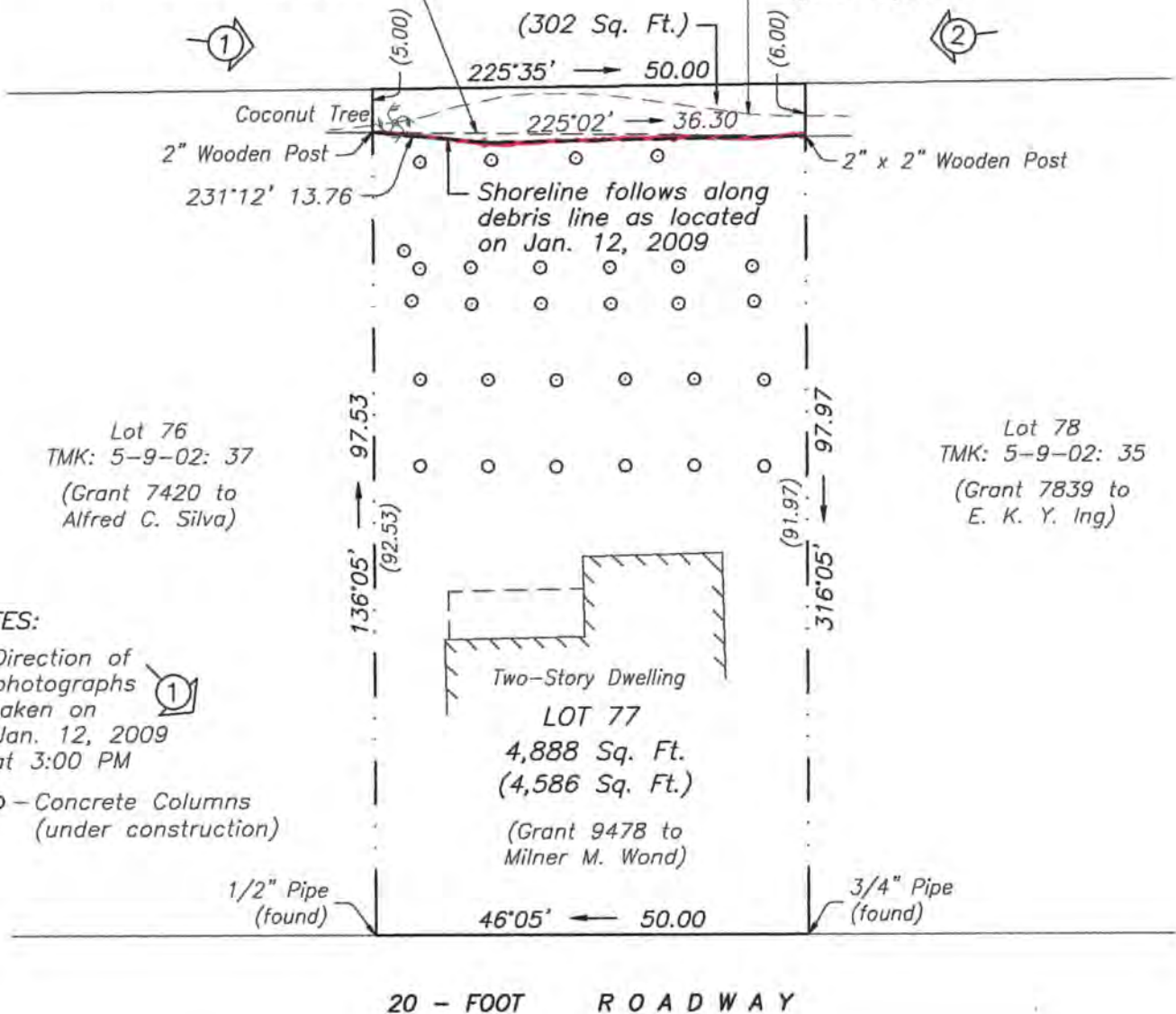
MAY 18 2009

[Signature]
Chairperson, Board of Land and Natural Resources

PUPUKEA - PAUMALU (SUNSET) BEACH PARK
Executive Order No. 2598

Shoreline certified
on December 5, 2006

Edge of Vegetation



NOTES:

1. Direction of photographs taken on Jan. 12, 2009 at 3:00 PM
2. ○ - Concrete Columns (under construction)



This work was prepared by me or under my supervision

GIL P. BUMANGLAG

Licensed Professional Land Surveyor

Certificate No. 8948

Exp. Date:

Date: January 12,

FB No. G-277: 3

c:\sdsk\proj\shore

SHORELINE SURVEY MAP
LOT 77 OF PUPUKEA-PAUMALU BEACH LOTS
AS SHOWN ON REGISTERED MAP No. 2556

Tax Map Key: 1st Div. 5-9-02: 36

At PUPUKEA, KOOLAULOA, OAHU, HAWAII

(Site Address: 59-181F Ke Nui Road, Haleiwa)

Owner: Todd D. Dunphy

Address: 2166 Haleiwa Street
Haleiwa, HI 96821

Exhibit 3: 2009 Certified Shoreline for Parcel 036

K-1

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8.5" x 13" =

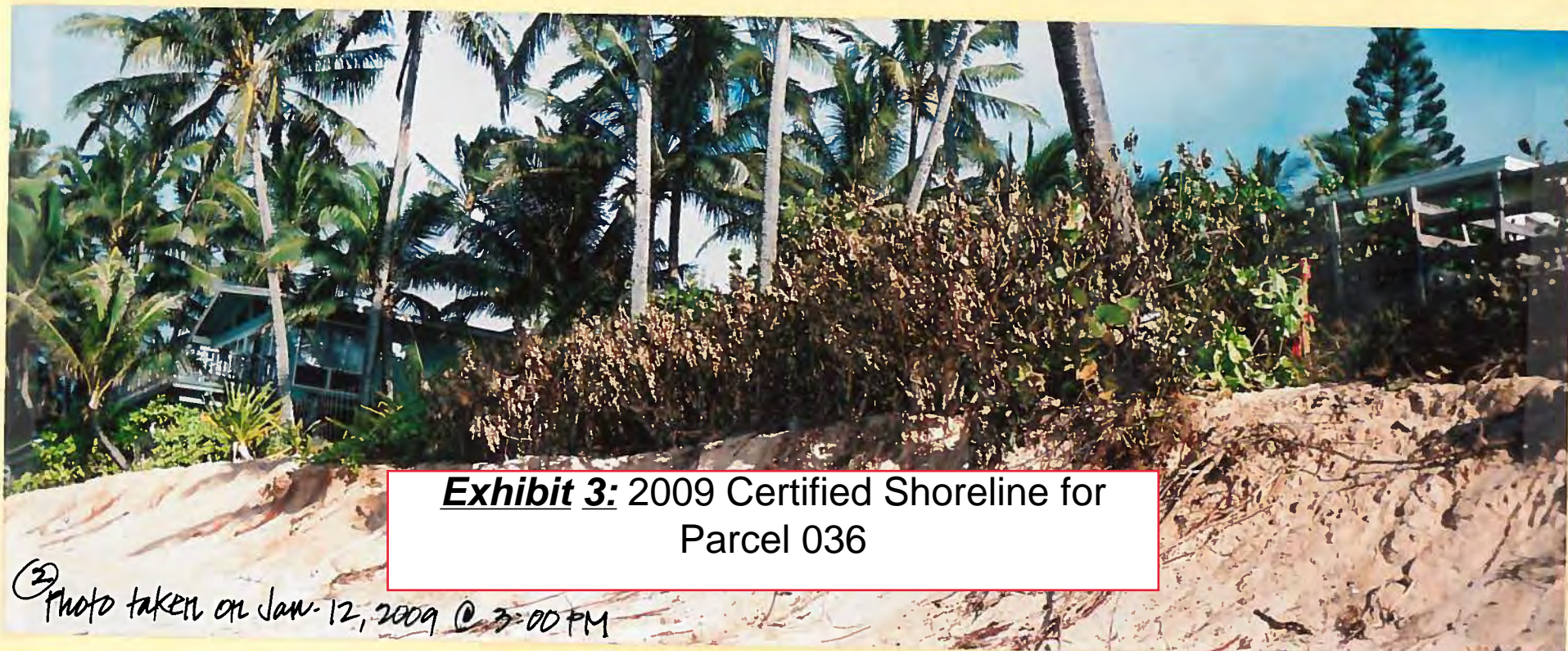


Exhibit 3: 2009 Certified Shoreline for
Parcel 036

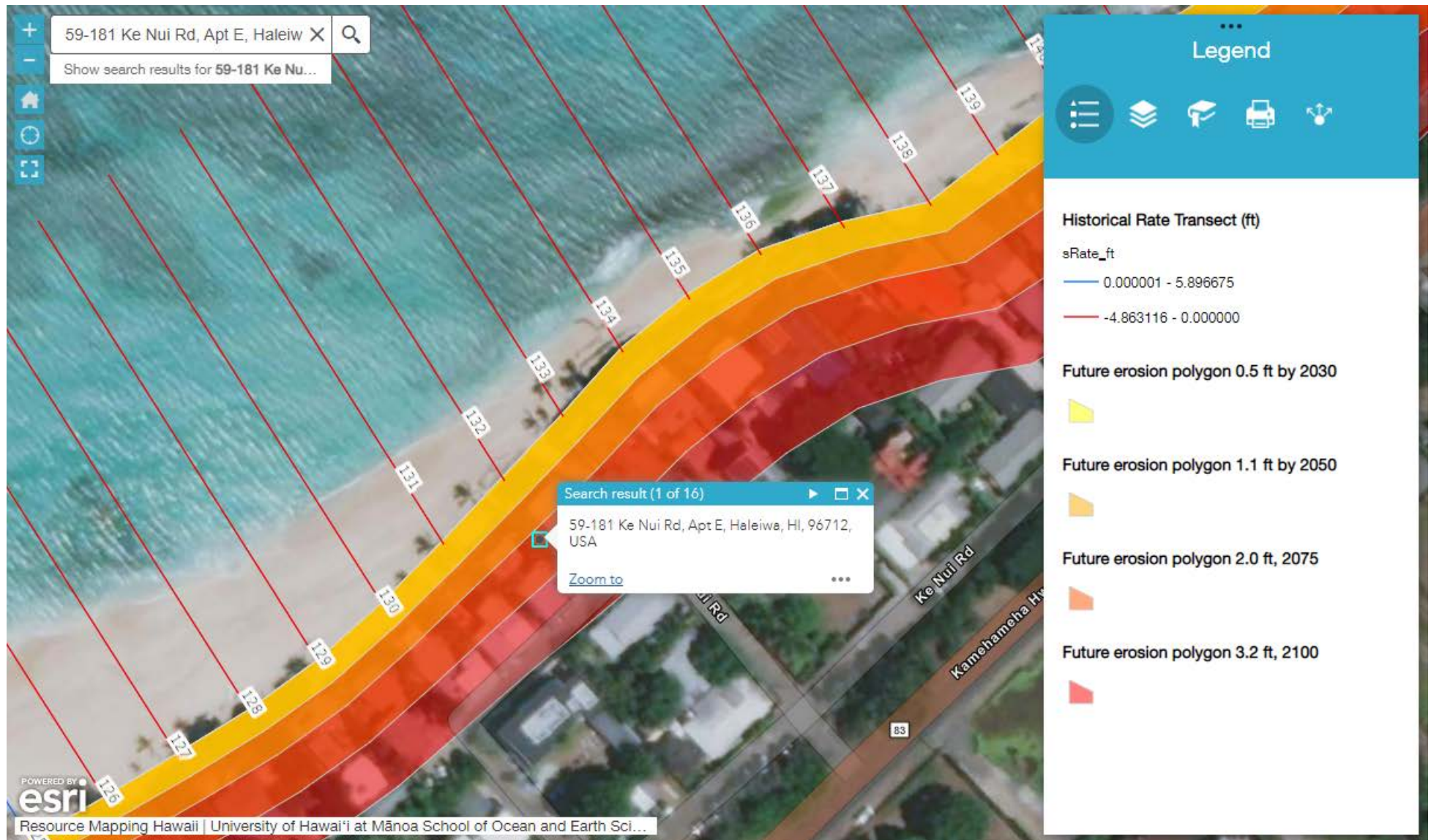


Exhibit 4: UH Coastal Geology Group Erosion Rate Map

<https://www.soest.hawaii.edu/coasts/index.php/resources/hawaii-shoreline-study-web-map/>

K-1

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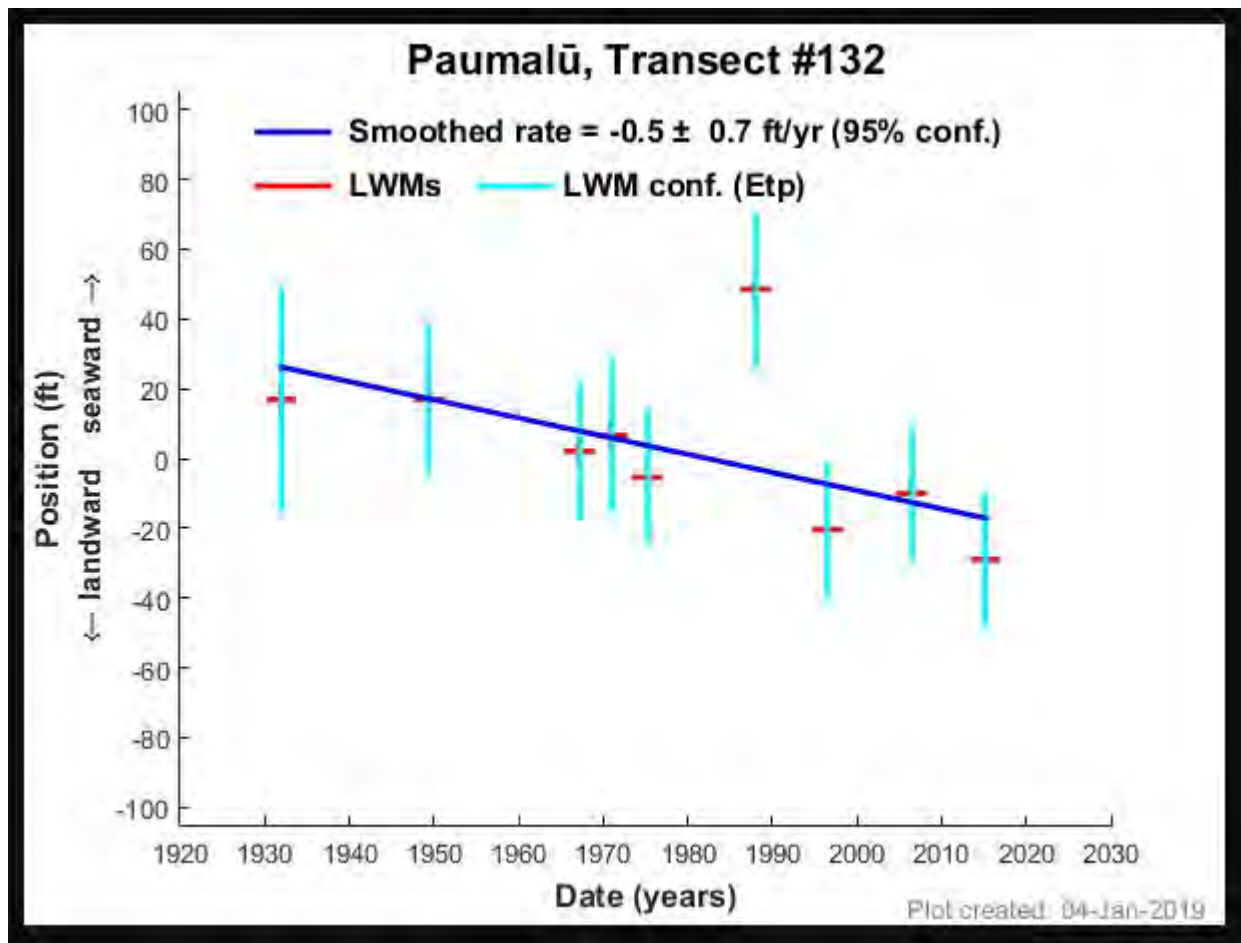


Exhibit 4: UH Coastal Geology Group Erosion Rate for Paumalu, Transect #132

<https://www.soest.hawaii.edu/coasts/index.php/resources/hawaii-shoreline-study-web-map/>



Exhibit 5: 12/26/2013 OCCL Photo of Shoreline Area
Fronting Subject Parcels



Exhibit 5: 12/26/2013 OCCL Photo of Shoreline Area Fronting the Subject Parcels After High Surf & Erosion



Exhibit 5: 12/28/2013 OCCL Photo of Shoreline Area Fronting the Subject Parcels



Exhibit 5: 12/28/2013 OCCL Photo of Shoreline Area Fronting the Subject Parcels



Exhibit 5: 1/4/2014 OCCL Photo of Shoreline Area Fronting the Subject Parcels



Exhibit 5: 1/4/2014 OCCL Photo of Shoreline Area Fronting the Subject Parcels



Exhibit 5: 1/14/2014 OCCL Photo of Shoreline Area Fronting the Subject Parcels



Exhibit 5: 1/14/2014 OCCL Photo of Shoreline Area Fronting the Subject Parcels



Exhibit 5: 1/14/2014 OCCL Photo of Shoreline Area Fronting the Subject Parcels



Exhibit 5: 1/29/2014 OCCL Photo of Shoreline Area Fronting the Subject Parcels



Exhibit 5: 12/3/2014 OCCL Photo of Shoreline Area Fronting the Subject Parcels



Exhibit 5: 3/10/2015 OCCL Photo of Shoreline Area Fronting the Subject Parcels



Exhibit 5: 3/25/2015 OCCL Photo of Shoreline Area Fronting the Subject Parcels



Exhibit 5: 3/27/2015 OCCL Photo of Sand Pushing Fronting the Subject Parcels



Exhibit 5: 3/27/2015 OCCL Photo of Sand Pushing Fronting the Subject Parcels



Exhibit 5: 6/24/2015 OCCL Photo of the Shoreline Area Fronting the Subject
Parcels



Exhibit 5: 1/23/2018 OCCL Photo of the Shoreline Area Fronting the Subject
Parcels



Exhibit 5: 3/19/2018 OCCL Photo of the Shoreline Area Fronting the Subject
Parcels



Exhibit 5: 11/14/2018 OCCL Photo of the Shoreline Area Fronting the Subject
Parcels



Exhibit 5: 12/31/2018 OCCL Photo of the Shoreline Area Fronting the Subject
Parcels



Exhibit 5: 3/9/2020 OCCL Photo of Shoreline Area Fronting Subject
Parcels



Exhibit 5: 9/4/2020 OCCL Drone Photo of Shoreline Area Fronting the Subject Parcels



Exhibit 5: 3/17/2021 OCCL Photo of Shoreline Area Fronting Subject Parcels



Exhibit 5: 7/23/2021 OCCL Drone Photo of Shoreline Area Fronting Subject Parcels



Exhibit 5: 7/23/2021 OCCL Drone Photo of Shoreline Area Fronting Subject Parcels



Exhibit 5: 9/15/2021 OCCL Drone Photo of Shoreline Area Fronting Subject Parcels



Exhibit 5: 10/12/2021 OCCL Drone Photo of Shoreline Area
Fronting Subject Parcels



Exhibit 5: 10/29/2021 OCCL Drone Photo of Shoreline Area Fronting Subject Parcels



Exhibit 5: 12/16/2021 OCCL Photo of Shoreline Area Fronting Subject Parcels



Exhibit 5: 1/17/2022 OCCL Photo of Shoreline Area Fronting Subject Parcels



Exhibit 5: 1/17/2022 OCCL Photo of Shoreline Area Fronting Subject Parcels



Exhibit 5: 1/17/2022 OCCL Photo of Shoreline Area Fronting Subject Parcels



Exhibit 5: 1/18/2022 OCCL Drone Photo of Shoreline Area Fronting Subject Parcels



Exhibit 5: 1/18/2022 OCCL Drone Photo of Shoreline Area Fronting Subject Parcels



Exhibit 5: 1/24/2022 OCC Photo of Shoreline Area Fronting Subject Parcels



Exhibit 5: 1/24/2022 OCCL Photo of Shoreline Area Fronting Subject Parcels



Exhibit 5: 1/24/2022 OCCL Photo of Shoreline Area Fronting Subject Parcels



Exhibit 5: 1/27/2022 OCCL Photo of Shoreline Area Fronting Subject Parcels



Exhibit 5: 1/27/2022 OCCL Photo of Shoreline Area Fronting Subject
Parcels



Exhibit 5: 1/27/2022 OCCL Photo of Shoreline Area Fronting Subject
Parcels



Exhibit 5: 1/31/2022 OCCL Photo of Shoreline Area Fronting Subject
Parcels



Exhibit 5: 1/31/2022 OCCL Photo of Shoreline Area Fronting Subject
Parcels



Exhibit 5: 2/16/2022 Photo of Shoreline Area Fronting Subject Parcels and Tarp/Geotextile Blanket

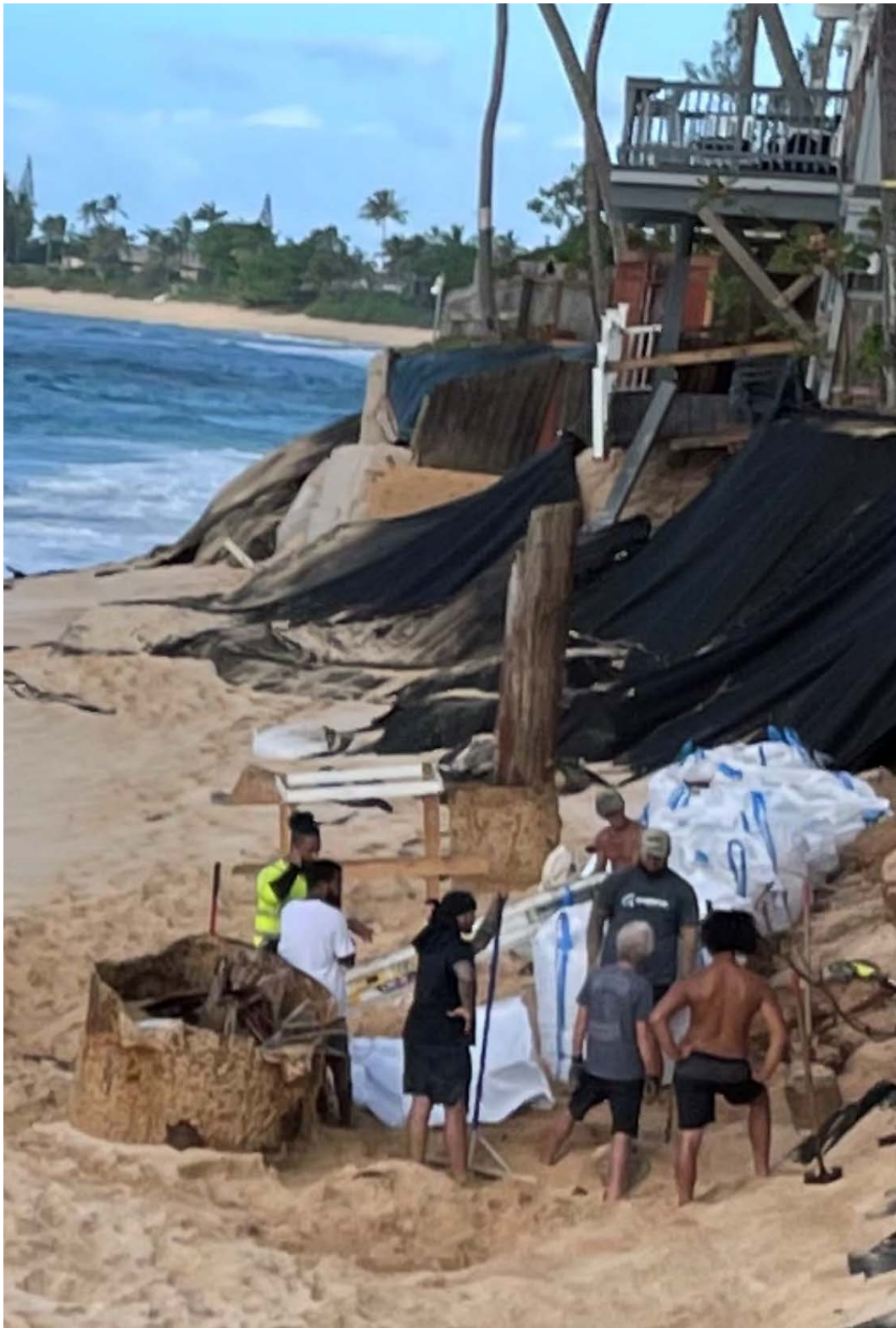


Exhibit 5: 2/23/2022 Photo of Shoreline Area Fronting Subject Parcels and Alleged Unauthorized Work



Exhibit 5: 2/28/2022 OCCL Drone Photo of Shoreline Area Fronting Subject Parcels



Exhibit 5: 4/7/2022 Photo of Shoreline Area Fronting Subject Parcels and Alleged Unauthorized Work



Exhibit 5: 4/7/2022 Photo of Shoreline Area Fronting Subject Parcels and Alleged Unauthorized Work



Exhibit 5: 4/8/2022 Screen-grab from Video Taken at Approximately 9pm of Alleged Unauthorized Work in the Shoreline Area Fronting Subject Parcels



Exhibit 5: 4/9/2022 Screen-grab from Video Taken at Approximately 9am of Alleged Unauthorized Work in the Shoreline Area Fronting Subject Parcels



Exhibit 5: 4/10/2022 Screen-grab from Video Taken at Approximately 4pm of Alleged Unauthorized Work in the Shoreline Area Fronting Subject Parcels



Exhibit 5: 4/10/2022 Photo Taken at Approximately 9pm of Alleged Unauthorized Work in the Shoreline Area Fronting Subject Parcels



Exhibit 5: 4/11/2022 Photo Taken at Approximately 6:39am of Alleged Unauthorized Work in the Shoreline Area Fronting Subject Parcels



Exhibit 5: 4/11/2022 Photo Taken at Approximately 6:46am of Alleged Unauthorized Work in the Shoreline Area Fronting the Subject Parcels



Exhibit 5: 4/11/2022 OCCL Photo of Alleged Unauthorized Work in the Shoreline Area Fronting Subject Parcels



Exhibit 5: 4/11/2022 OCCL Photo of Alleged Unauthorized Work in the Shoreline Area Fronting the Subject Parcels



Exhibit 5: 4/11/2022 OCCL Photo of Alleged Unauthorized Work in the Shoreline Area Fronting the Subject Parcels



Exhibit 5: 4/11/2022 OCCL Photo of Alleged Unauthorized Work in the Shoreline Area Fronting Subject Parcels



Exhibit 5: 4/11/2022 OCCL Photo of Todd D Dunphy Appearing to Escort Excavator off the beach/State Submerged Lands



Exhibit 5: 4/11/2022 OCCL Photo of Todd D Dunphy Appearing to Escort Excavator off the beach/State Submerged Lands



Exhibit 5: 4/11/2022 OCCL Photo of Todd D Dunphy Appearing to Escort Excavator off the beach/State Submerged Lands



Exhibit 5: 4/11/2022 OCCL Photo of Alleged Unauthorized Work in the Shoreline Area Fronting Subject Parcels



Exhibit 5: 4/11/2022 OCCL Photo of Alleged Unauthorized Work in the Shoreline Area Fronting Subject Parcels



Exhibit 5: 4/13/2022 OCCL Drone Photo of Shoreline Area Fronting Subject Parcels



Exhibit 5: 4/13/2022 OCCL Drone Photo of Shoreline Area Fronting Subject Parcels



Exhibit 5: 4/13/2022 OCCL Drone Photo of Shoreline Area Fronting Subject Parcels

From: [Todd Dunphy](#)
To: [Fitzpatrick, Trevor J](#)
Subject: [EXTERNAL] Emergency sand push
Date: Tuesday, February 1, 2022 10:07:11 AM

My house is built with little white one that's hanging I have two houses there that are both ones 3ft undermined and the other house it's 4 feet from my front [REDACTED] is my phone number

Exhibit 6: Todd D Dunphy 2/1/2022 Email and Attachments



Exhibit 6: Todd D Dunphy 2/1/2022 Email and Attachments



Exhibit 6: Todd D Dunphy 2/1/2022 Email and Attachments



Exhibit 6: Todd D Dunphy 2/1/2022 Email and Attachments

PERMIT

DEPARTMENT OF PARKS AND RECREATION
CITY AND COUNTY OF HONOLULU
TELEPHONE 768-3440

DATE ISSUED 3/25/21

For the use of (Park or facility)

Sunset Beach Park - shoreline fronting 59-181 D.E.F.G Ke Nui Rd

<input checked="" type="checkbox"/> General	<input type="checkbox"/> Athletic	<input type="checkbox"/> Trailer
<input type="checkbox"/> Camping	<input type="checkbox"/> Picnic	<input type="checkbox"/> Camping
<input type="checkbox"/> Picnic	<input type="checkbox"/> Site No	<input type="checkbox"/> Camper
		<input type="checkbox"/> Site No

NO

Driving or parking on grass, animals, guns, open fires, cutting of trees, noise exceeding the standards set forth in ROH § 10-1.2(b) (8), as amended. See bottom of permit for further rules and regulations. Permittee shall have permit readily available at all times.

NO ALCOHOLIC BEVERAGES ALLOWED

Maintenance

Must comply with attached terms & conditions.
Must have permit on hand at the park - no electronic copies

ISSUED TO	
Name	AGT Construction LLC Greg Talboys
Address	59-372 Pupukea Rd Haleiwa, HI 96712
Business Phone	Home Phone
808-478-6369	
Applicant's Signature For Greg Talboys	

Deposit	None	PERMIT IS FOR THE FOLLOWING DAYS			
Processing Charge		Date		Time	
		From	To	From	To
		March 25, 2021	April 13, 2021		
Kitchen					
Allendant Service		No. persons	Purpose	Right-of-Entry	
Commercial Fee		Other Information			
Rental Charge		Temporary Preventative Berm Maintenance at 59-181 D.E.F.G Ke Nui Rd per DLNR Corr. OA-21-83 giving permission to move sand on the beach to the berms			
Others		AGT Construction LLC is very familiar with the area having lived on or near it for several years. We will be extremely careful to follow all guidelines as stated in DLNR OCCL SH Correspondence OA-21-83. We are very grateful for the opportunity to protect the properties at 59-181 D.E.F. & G Ke Nui Rd			
Cash	Check	EFFECTIVE JAN. 1, 2014 - NO SMOKING IN ALL CITY PARKS (Bill 25 - ROH 13-27)			
		MUST WEAR MASKS & PRACTICE SOCIAL DISTANCING when possible while on park property			
TOTAL	\$0.00	By LS#4		DEPARTMENT OF PARKS AND RECREATION	
		City and County of Honolulu		PERMIT NO.	
				P210238	

IT IS ILLEGAL TO FEED BIRDS AT THIS PARK

PARKKEEPER has authority to deal with picnickers and campers; to act in cases of breach of rules, regulations and or laws of the City and County, State and Federal governments.

READ CAREFULLY

The Department of Parks and Recreation shall have the authority to revoke a permit upon reasonable notification and the opportunity to cure a violation of the conditions or standards for issuance as set forth in ROH Chapter 10 and the rules and regulations promulgated pursuant to ROH § 10-1.3 (b), as amended. Cancellation or changes in schedules must be promptly reported to the Department of Parks and Recreation. Charging admission, taking a collection of the sale of goods and services is prohibited, unless prior written permission has been obtained from the Department of Parks & Recreation.

DAMAGES. All permits issued by the Department of Parks & Recreation shall be subject to the regulations of the Department and City Ordinances, and persons, teams or organizations to whom such permits are issued shall be bound by such regulations and ordinances as fully as though the same were inserted in such permits. Except for public assemblies, persons, teams, or organizations to whom such permits are issued shall be liable for loss, damage or injury to persons or property resulting from the use of the public facilities under such permits, as well as any breach of regulations or ordinances, to the person or persons suffering such loss, damage or injury, and to the Department of Parks and Recreation in case said Department shall become liable for such loss, damage or injury.

GENERAL RULES

- Only charcoal may be used for cooking fires which must be placed in barbecue stoves where provided. If private barbecue stoves are used, they must be lifted at least 12 inches above the grass and kept well away from tree trunks and other plants.
- Campers and/or picnickers may not take exclusive possession of any equipment in the park. Pavilions may not be reserved for exclusive use.
- Do not wash dishes or equipment in shower rooms or in open shower areas.

CAMPING RULES

- This permit is valid only for the stated period.
- Tents are to be erected where designated by parkkeeper, or at least 50 feet from adjoining property.
- Campers must keep their campsites clean at all times and deposit rubbish in containers provided.
- Fires must be built only in stoves, firepits, or campfire rings where provided. (Ashes and charcoal shall not be deposited near trees, shrubs or vines but shall be left or deposited in areas designated.)
- No generators of any type shall be operated at any campsite.
- Trailers, campers, or other vehicles must secure a permit which allows these vehicles to park in designated areas in certain parks only.
- Maximum 2 tents, 3 cars, 10 person per campsite, maximum tent size is 15 x 11 feet.
- Refer to Camping Rules & Regulation for further rules.

PICNIC RULES

- This permit is issued only for the time and place designated.
- Picnickers must keep their area clean and deposit all rubbish in the containers provided.
- Refer to the Picnic Rules & Regulations for further picnic rules.

PENALTY: IMMEDIATE REVOCATION OF PERMIT

Exhibit 6: Todd D Dunphy 2/1/2022 Email and Attachments

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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

CONSERVATION AND RESOURCES DIVISION
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAOIOLANI ISLAND RESERVE OFFICE
LAND
STATE PARKS

Correspondence OA-21-83

DLNR:OCCL:SH

Todd Dunphy
59-181 E Ke Nui Road
Haleiwa, HI 96712

Dear Mr. Dunphy,

SUBJECT: Request for Temporary Preventative Berm Maintenance at 59-181 D E F G Ke Nui Road, Haleiwa (Sunset Beach, Oahu; TMKs (1) 5-9-002:034, 35, 36 and 037)

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) is responding to your January 20, 2021 request to conduct preventative beach maintenance (sand pushing) to restore the backshore berm as temporary erosion control along approximately 200 feet of the shoreline fronting 59-181 D E F G Ke Nui Road, Haleiwa (Sunset Beach, Oahu; TMKs (1) 5-9-002:034, 35, 36 and 037).

The coastal environment at the subject properties is characterized by a seasonally-variable beach backed by an elevated (about 20 to 25 feet) sand berm. This high-wave berm feature underlies many of the shore-front properties along the North Shore. The beach fronting the subject properties is generally characterized by variable beach width due to erosion from seasonal waves. During recent years, erosion from seasonal waves combined with a long-term trend of beach erosion, has contributed to a steep eroded bank (scarp) in the backshore berm fronting the subject properties, which at times poses a threat to single-family residences on the properties. In response, sand pushing (sand scraping and movement by mechanical means) and berm restoration projects have been authorized on several occasions in the past by DLNR and conducted by the property owners and neighboring properties.

The purpose of the January 20, 2021 requested project is to push sand from the seasonally-widened beach to restore the sand berm at the back of the beach as a preventative measure to provide added protection (an "erodible buffer") for the subject properties while conserving the natural characteristics of the public beach environment. If sand pushing and berm restoration is to be used as a means of erosion control in this area, it will likely need to be repeated (if enough sand is present to conduct such work) and should be conducted when the beach has widened due to seasonal accretion (as it is now) to limit impacts to beach environment and alongshore public assess.

The request is to push (scrape) sand from the beach to supplement the existing backshore berm as a preventative measure to improve seasonal erosion protection as follows:

Exhibit 6: Todd D Dunphy 2/1/2022 Email and Attachments

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DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF: OCCL: MC

COR: OA 22-121

Tropical Exotics III & IV LLP
c/o Todd Dunphy
59-181 #F Ke Nui Road
Haleiwa, HI 96712

Feb 4, 2022

Subject: Potential Unauthorized Land Uses within the Conservation District.
Located at 59-181 E & F Ke Nui Road
Por. Pupukea-Paumalu Beach Lots, Koolauloa, Oahu
Tax Map Key (TMK): (1) 5-9-002:035 and 036 (seaward)

Dear Landowners:

It has come to the Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL)'s attention that there has been work done in the shoreline area fronting your property, within the State Land Use Conservation District. Site inspections on 1/24/2022, 1/27/2022, 1/31/2022, and 2/2/2022 has revealed the continued installation of alleged unauthorized erosion control materials and debris seaward of the subject properties (see attached).

Please note that land uses in the Conservation District require approval pursuant to Hawaii Administrative Rules (HAR) Chapter 13-5. We do not have any record of approving the above uses, and these land uses may be in violation of HAR 13-5.

The DLNR has numerous concerns about these materials and work being done. Shoreline structures can create downstream impacts that negatively impact your neighbors' properties and the health of the beach. Improperly installed structures create debris that pollutes the ocean. In the past temporary structures that have been granted on an emergency basis have not been removed.

The DLNR requests that you provide our office with a written statement regarding the alleged unauthorized activities that have been conducted in the Conservation District fronting your properties, and how you intend to correct this situation. Please submit your response within thirty (30) days from the date of this letter.

Exhibit 7: COR OA 21-121

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Tropical Exotics III & IV LLP,
c/o Todd Dunphy

COR: OA 22-121

Should you have any questions regarding this matter, please contact Michael Cain of our Office of Conservation and Coastal Lands at michael.cain@hawaii.gov.

Sincerely,

S Michael Cain

Michael Cain, Acting Administrator
Office of Conservation and Coastal Lands

C: O'ahu Board Member
DOCARE
ODLO
DCCA
C&C Honolulu,
Dept. Planning & Permitting
Dept. Parks & Recreation

Exhibit 7: COR OA 21-121



Exhibit 7: COR OA 21-121

Exhibit 1: Taken 1/24/2022

Seaward of TMK: (1) 5-9-002:035



Exhibit 2: Taken 1/24/2022

Seaward of TMK: (1) 5-9-002:035

Exhibit 7: COR OA 21-121

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Exhibit 3: Taken 1/24/2022

Seaward of TMK: (1) 5-9-002:036

Exhibit 7: COR OA 21-121

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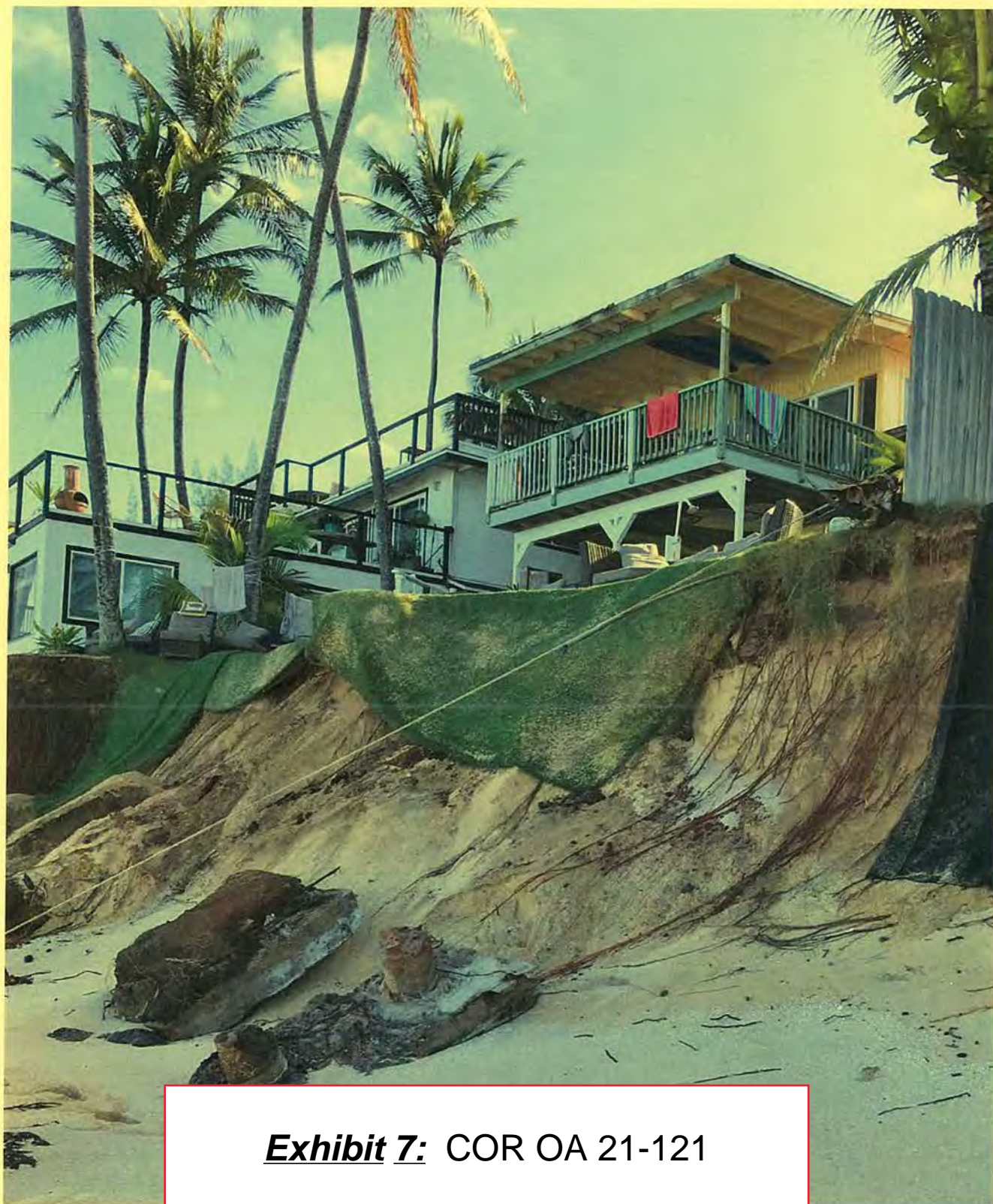


Exhibit 7: COR OA 21-121

Exhibit 4: Taken 1/24/2022

Seaward of TMK: (1) 5-9-002:036

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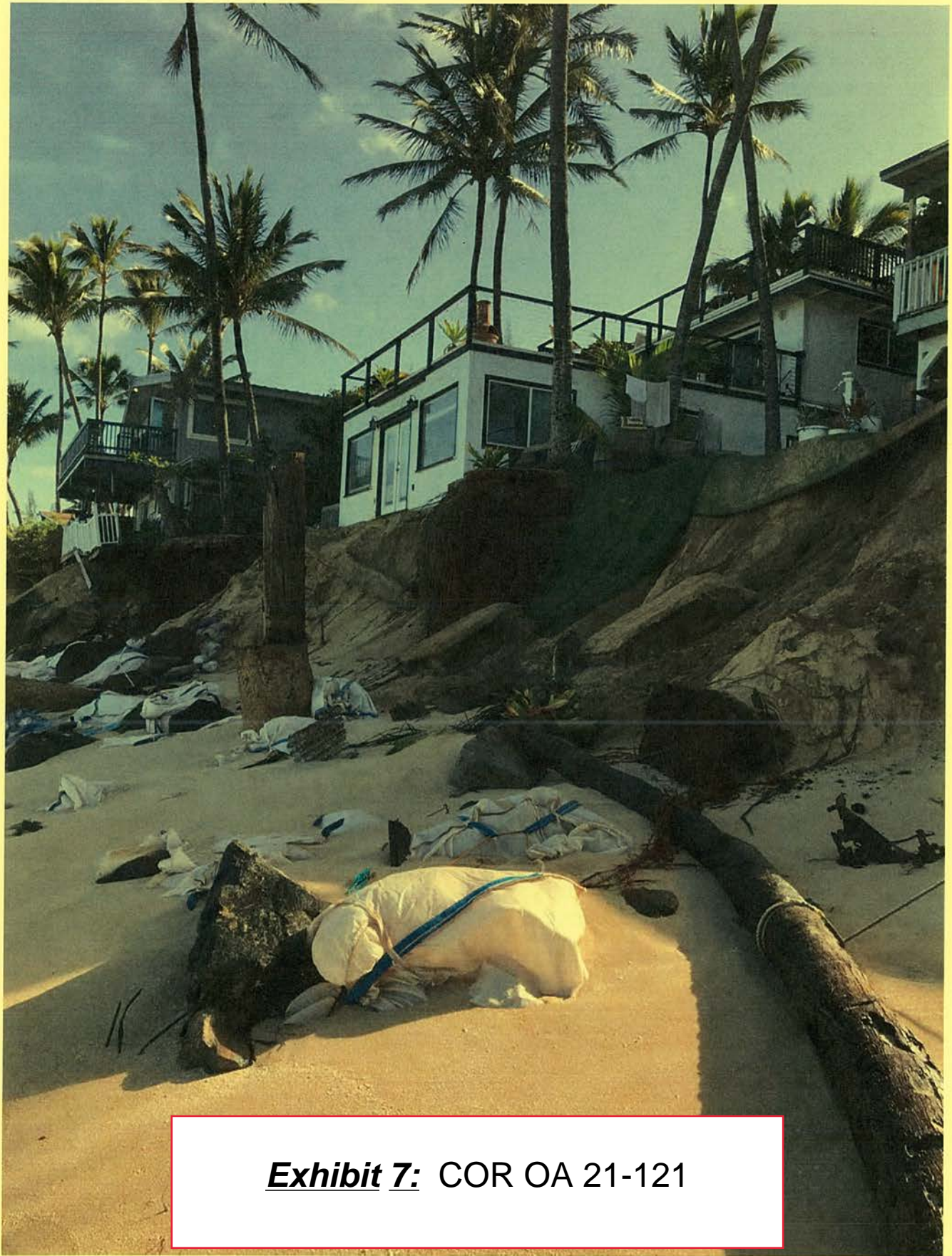


Exhibit 7: COR OA 21-121

Exhibit 5: Taken 1/24/2022

Seaward of TMKs: (1) 5-9-002:035 & 036

K-1

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State investigating after North Shore homeowner moves tons of sand in bid to protect property



An Oahu homeowner takes matters into his own hand and shored up his property against erosion.

By [Jolanie Martinez](#)

Published: Apr. 12, 2022 at 12:16 AM HST | Updated: Apr. 12, 2022 at 12:20 AM HST



HONOLULU (HawaiiNewsNow) - The state is investigating after a North Shore homeowner used an excavator to move tons of sand in what he says was a bid to protect his and his neighbors’ homes.

Homeowner Todd Dunphy acknowledged he took the action amid worsening erosion at Rocky Point Beach.

“I heard a crack the other day and I just went out (and said) I’m saving my house, I don’t care,” said Dunphy. “I’ll take the fine, whatever.” Dunphy said he paid about \$200,000 to build up the sand near his home before a state land officer advised him Monday that unauthorized material will need to be removed.

The state Department of Land and Natural Resources told Hawaii News Now they are currently investigating the activities that occurred over the weekend.

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Exhibit 8: 4/12/2022 Hawaii News Now Report "State investigation after North Shore homeowner moves tons of sand in bid to protect property"



There are no current state permits for emergency measures in this area, and numerous temporary emergency permits have expired, or activities were conducted that weren't authorized under the permits. DLNR continues to be focused on protecting the public trust in beaches. The homeowners in this area, whose homes are built on sand berms that are needed to replenish the beach area, may ultimately need to move their homes to other locations away from the eroding coastline."

In February, a neighboring home [collapsed onto the beach](#).

Since then, Dunphy said the foundation of his home has been crumbling rapidly.

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"I couldn't walk out of my house, it was a 30-foot drop," said Dunphy. "It started from this property next door all the way down to the left of me, every one of our properties was virtually on a cliff."

Dunphy hopes his reinforcement will hold for at least a year.

But Chip Fletcher, chair of the Honolulu Climate Change Commission, said the measure might be as short-lived as a week. "We may not even see that land last through strong trade winds and the spring high tides that come that become especially high during the course of the summer," Fletcher said.

He added it makes more sense to "figure out how we're going to learn to live with water in these locations, either by raising the land and assets or by redeveloping them so that they are amenable to flooding and related to sea level rise."

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And it's not just homes.

Economist Paul Brewbaker has done research for the state on which coastal roads will eventually need to move. "So the idea that there's nowhere that they can go is just wrong," said Brewbaker. "But it's inevitable that we have to move the road, move the water supply, and put a damn sewer in there."

"And that's the public infrastructure role, the rest is private investment."

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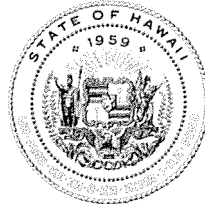
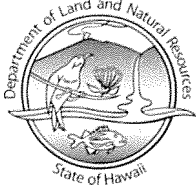
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Exhibit 8: 4/12/2022 Hawaii News Now Report "State investigating after North Shore homeowner moves tons of sand in bid to protect property"

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Ref:OCCL:MC

Apr 13, 2022

TIME SENSITIVE

To: Kathleen Ho, State Department of Health, Deputy Director for Environmental Health
Rade Vanic, Interim Chief of Police, Honolulu Police Department
Laura Thielen, Director, Honolulu Department of Parks and Recreation
Dean Uchida, Director, Honolulu Department of Planning and Permitting
Lt. Col Eric Marshall, Commander, U.S. Army Corps of Engineers, Honolulu District

From: Suzanne D. Case, Chair, Board of Land and Natural Resources

Suzanne D. Case

SUBJECT: Unauthorized shoreline disturbances with machinery at 59-181 E and F Ke Nui Road, Honolulu, HI, Tax Map Key Parcels (TMK) (1) 5-9-002:035 and 036

The Department of Land and Natural Resource, Office of Conservation and Coastal Lands (OCCL) has begun an investigation into unauthorized shoreline activities on State-owned land in the State Land Use Conservation District fronting 59-181 E and F Ke Nui Road, Tax Map Key Parcels (TMK) (1) 5-9-002:035 and 036. We believe that some of the activities that are occurring also fall under your agency's jurisdiction, and we respectfully request you investigate whether any violations have occurred pursuant to your agency's rules and regulations.

2022 Background

Site inspections by OCCL on January 24, January 27, January 21, and February 02 revealed the installation of unauthorized erosion control materials in the shoreline fronting the subject parcel, as well as the presence of large amounts of debris from previous shoreline structures that had failed.

OCCL notified the landowner, Mr. Todd Dunphy, that these are potential land use violations that could endanger the public. In its February 4 letter, (the?) DLNR notified Mr. Dunphy that:

The DLNR has numerous concerns about these materials and work being done. Shoreline structures can create downstream impacts that negatively impact your neighbors' properties and the health of the beach. Improperly installed structures create debris that pollutes the ocean.

Mr. Dunphy was given thirty days to respond with a written statement regarding the alleged unauthorized activities, and how he intended to correct the situation. The DLNR did not receive a written response but did continue to engage with Mr. Dunphy by email to encourage him to submit a proposal for how he intended to correct the situation. No proposal was ever submitted to (the) DLNR.

April 7 to April 11, 2022

On Thursday April 7, OCCL received multiple anonymous tips that Mr. Dunphy was preparing to bring in an excavator over the weekend and to install sandbags. OCCL alerted the DLNR Division of Conservation and Resource Enforcement (DOCARE) Officers to be on the alert. Community members were advised to call either the DOCARE Hotline or the Honolulu Police Department (HPD) if they observed machinery within the shoreline over the weekend.

Community members provided OCCL with photos of men digging a trench within the shoreline fronting the subject property and placing sandbags in the trench.

Community members provided OCCL with photographs of an excavator on the beach working during the night and in the early morning pushing sand to bury the bags and to create a steep embankment fronting the subject property and the neighboring properties. The work occurred beginning Friday night April 8 and continued through Monday morning April 11.

On Sunday April 10, 10:12 pm HPD Dispatch reported receiving a complaint of loud noise from an excavator working on the beach fronting 59-181 Ke Nui Road, near Beach Access 280A. At 11:01 pm HPD officers arrived on scene and reported that they did not hear any loud noises, and that the machinery was off. HPD Officers departed with no further action taken.

On Monday April 11, OCCL staff and a DOCARE officer conducted a site visit and observed that a large, steep berm had been built within the shoreline. During the site visit Mr. Dunphy and the excavator operator physically threatened OCCL staff. An incident report regarding the altercation is available upon request.

We have attached photos of the work that occurred over the weekend.

The DLNR is currently investigating the activities that occurred over the span of April 7 to 11. There are no current valid permits for emergency measures in this area, and numerous temporary emergency permits have expired or activities were conducted that were not authorized under the permits. We are unsure if the subject properties are on cesspools or have septic tanks and are concerned about possible impacts of the work on water quality. The DLNR continues to be focused

on protecting the shoreline for the benefit of the public, and to abate public nuisances using the combined efforts of our agencies.

We would be happy to provide any information that could assist in your own investigation. We are concerned that these activities will continue if not abated. Please contact Michael Cain at the Office of Conservation and Coastal Lands (OCCL) at michael.cain@hawaii.gov or at 808-798-6912 for further information and to let the DLNR know how you intend to respond.

Attachments

1. Correspondence OA-22-121 regarding potential unauthorized land uses, February 4, 2022
2. Report on debris at 59-181 Ke Nui Road, December 2013 to March 2022
3. Photos from 59-181 Ke Nui Road, April 7 to 11, 2022